

No. 6

PERIOD COVERED: JULY-DECEMBER, 1960

CANON LAW ABSTRACTS

A Half-Yearly Review
of Periodical Literature
in Canon Law

BY MEMBERS OF THE
CANON LAW SOCIETY OF GREAT BRITAIN

EDITOR—

REV. J. BARRY
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DRYGRANGE, MELROSE, SCOTLAND

Price 4/-

CANON LAW ABSTRACTS

List of Abbreviations, Periodicals and Contributors:—

AC	Année Canonique, Paris. Mgr. D. Shanahan (Brentwood).
ACR	Australasian Clergy Record, Manly. Fr. Finian Roche, O.F.M.
AdC	Ami du Clergé, Langres. Fr. C. Lightbound (Shrewsbury).
ADC	Archivio di Diritto Canonico. Fr. Hulme (Northampton).
AER	American Ecclesiastical Review, Wash. Fr. B. Travers (Salford).
AfER	African Ecclesiastical Review, Masaka. P. Clarke (Edinburgh).
AkK	Archiv für katholisches Kirchenrecht, Mainz. Fr. C. Lightbound (Shrewsbury).
Ap	Apollinaris, Rome. Fr. Sheehy (Dublin).
CBG	Collationis Brugenses et Gandavenses, Ghent and Bruges. Fr. P. Eyckens (Malines).
CL	Catholic Lawyer, New York. Fr. W. O'Callaghan (Clifton).
CM	Clergy Monthly, Kurseong, India. Fr. G. Mooney (Liverpool).
CME	Collectanea Mechliniensia. Fr. P. Eyckens (Malines).
CR	Clergy Review, London. Fr. L. McReavy (Hexham).
CpR	Commentarium pro Religiosis, Rome. Fr. Urban Judge, O.F.M.
DC	Documentation Catholique, Paris. Mgr. J. Wilson (Brentwood).
EJC	Ephemerides Juris Canonici, Rome. Fr. G. Sheehy (Dublin).
EL	Ephemerides Liturgicae, Rome. Fr. U. Judge, O.F.M.
ETL	Ephemerides Theologicae Lovanienses. Fr. D. Fogarty (Southwark).
F	The Furrow, Dublin. Fr. B. Scantlebury (Portsmouth).
G	Gregorianum, Rome. Fr. V. P. Brassel, S.J.
HPR	Homiletic and Pastoral Review, N.Y. Fr. J. McQuade (Motherwell).
IDE	Il Diritto Ecclesiastico, Milan. Fr. E. McCaffrey, O.D.C. (Dublin).
IER	Irish Ecclesiastical Record, Dublin. Fr. J. Chalmers (Glasgow).
ITQ	Irish Theological Quarterly, Dublin. Fr. J. Cunningham (Belfast).
J	The Jurist, Washington. Fr. A. Moore (Westminster).
L	Laurentianum, Rome. Fr. Bernardine, O.F.M. Cap.
ME	Monitor Ecclesiasticus, Rome. Fr. V. P. Brassel, S.J.
NRT	Nouvelle Revue Théologique, Louvain. Fr. R. Clarke, C.P.
OAK	Oesterreichisches Archiv für Kirchenrecht. Fr. J. Cunningham (Belfast).
P	The Priest, Huntington, Indiana. Fr. J. Shine (Waterford).
PdC	Palestra del Clero, Rovigo. Fr. P. Anglim (Westminster).
Per	Periodica, Rome. Fr. B. Ledwick, S.M.
PM	Perfice Munus, Turin. Fr. M. O'Riordan (Rome).
RDC	Revue de Droit Canonique, Strasbourg. Mgr. D. Shanahan (Brentwood).
RDT	Revue diocésaine de Tournai. Fr. P. Eyckens.
REB	Revista Eclesiástica Brasileira, Petrópolis. Fr. T. Hartley (Shrewsbury).
REDC	Revista Espanola de Derecho Canonico. Fr. J. Beel (Nottingham).
RfR	Review for Religious, Baltimore. Fr. R. Clarke, C.P.
RyF	Razón y Fe. Can. E. Suárez (Oviedo).
ST	Sal Terrae, Santander. Can. Suárez, Fr. Brassel, S.J.
TS	Theological Studies, Woodstock. Fr. D. Fogarty.
VR	Vida Religiosa, Madrid. Fr. H. Condon, C.P.
ZSS	Zeitschrift der Savigny Stiftung, Weimar. Fr. J. Barry (Edinburgh).

Note; In the following Abstracts, if the periodical appears monthly, the month is given in Arabic numerals. Thus CR 7/60 refers to the July number, 1960. If the periodical appears less often, the number is given in Roman numerals. Thus J IV/60 is the fourth fascicule or number for 1960.

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GENERAL AND HISTORICAL SUBJECTS

J IV/60, 371-397: J. Abbo: The Revision of the Code. (Article).

On 25/1/59 the Holy Father, Pope John XXIII, expressed the intention of having the Code brought up to date. In this article, after a few words about the Code in general, A. discusses what might well be the nature and scope of such a revision.

J III/60, 243-252: G. Del Vecchio: Natural law and the teachings of Pius XII. (Article).

A critical investigation of the natural law based on an analytical examination of human nature. Quoting frequently from the writings of Pius XII, G. shows that all law must rest on the natural law inscribed in the heart of man and that the fundamental reason behind a law must be the indestructible dignity of the human being, his conservation and development. The work of the jurist will be a futile playing with words and concepts if these principles are ignored, and will lose sight of its fundamental objective: the realization of Good in the form of law.

Per III/60, 267-320: Concilium, Synodus: Acta Sanctae Sedis, 1/1/60-5/6/60.

Collection of pronouncements on the Ecumenical Council and the Roman Synod. (1) General chronological list; (2) Classification; (3) Texts quoted in chronological order for each subject.
Cf. CLA, 5, 3.

Per IV/60, 497-508: J. Lo Grasso S.J.: Summarium Primae Romanae Synodi constitutionum de normis praevis et de cleri juribus et officiis.

OAK III/60, 161-189: Hugo Hantsch O.S.B.: Die "Arbrennuntiation" im Taufritus und die Mönchsprofess, ihre Beziehungen zueinander und zu zeitgenössischen Rechtsanschauungen. (Article).

The renunciation of Satan, etc., in the Baptismal vows was not derived from the Roman stipulatio, but is based on Biblical usage. The renunciation in monastic profession was largely modelled on the Baptismal renunciation. It was primarily a sacred rite rather than a contract.

OAK IV/60, 264-284: A. Szentirmai: Das Staatskirchenrecht des Kommunismus. (Article).

An accurate examination of the civil laws on Church matters in Eastern European countries at present. S. shows that these laws are almost entirely adopted from past legal systems (Josephism etc.).

CpR III-IV/60, 348-357: I. Ting Pong Lee, C.M.F.: De specificis Notis Iuris Missionarii Codicis. (Article).

L. illustrates the gradual incorporation of Missionary Law into the common law, though, inevitably, it is not fully achieved. Its specific character is retained in the Code. It is essentially *ius flexibile*, *militare*, *expeditum*, *praevidens* in order to provide for the specific work of the Missions.

CpR III-IV/60, 269-347: B. Frisón, C.M.F.: Excursus in Constitutionem Apostolicam Sedes Sapientiae. (Article).

A juridical study from a fourfold point of view of the contents of the *Sedes Sapientiae*. F. first explains the relationship of the document to the Code, determining which statutes merely explain the law of the Code and which modify it. Then he determines the obligation of the various statutes, expounds the new juridical principles and institutions established by the Constitution and finally provides an extensive bibliography.

RDC III-IV/60 & I/61, 117-125: J. T. Delos, O.P.: Réflexions sur le problème des "Sources Formelles" de droit. (Article).

After considering the views of Ago (1957), Batiffol (1960), Kelsen (1959) and Giraud (1960), D. has some general reflexions on the role of sociology and of nature in the formation of positive law.

RDC III-IV/60 & I/61, 192-213: R. Metz: Les Conciles Oecuméniques et le Code de 1917. (Article).

The Code was to keep the words of the sources as far as possible. So the Consultors were provided with a collection of texts. In the annotated edition of the Code prepared by Gasparri, of the 2414 canons, 2139 have references to the *Fontes*, and of these 786 are to the Councils. M. analyses these texts.

L IV/60, 389: Fr. Antoninus, O.F.M., Cap: Synodi Romanae Primae prospectus generalis. (Article).

A brief survey of the preparations for the recent Roman Synod, its discussions and relevance to the forthcoming

General Council. In the matters discussed at the Synod there would appear to be a hint of what the Council will be concerned with, since the needs of the Diocese of Rome are not unique. The Church at large has need of more vocations, greater sanctity among the clergy both secular and religious, more fervent pastoral activity.

RDC III-IV/60 & I/61, 136-156: G. Fransen: Une Collection Canonique de la Fin du XIe Siecle. (Article).

The Ms. 11548 (Ee 106) in the Biblioteca Nacional de Madrid. Composed in decade after 1080, probably in France: in the stream of the Gregorian Reform, but moderate. F. does not edit but analyses the text, with rubric, incipit and explicit, also with indication of probable source and location in Gratian.

RDC III-IV/60 & I/61, 157-165: J. Gaudemet: Orthodoxie et Interpolations (à propos de CTh.XVI, 1, 4 et XVI, 4, 1). (Article).

A Constitution originally intended to favour the Arians, in an abridged form was made to favour the Nicaeans: this explains the two versions of the same law in the Theodosian Code.

RDC III-IV/60 & I/61, 166-173: G. Le Bras: Le Droit Romain dans la Littérature Quodlibétique. (Article).

Le Bras shows how the authors of Quodlibets in 13/14th centuries not only considered some of the questions raised in Roman law, but used quotations from Roman law in their own questions. Theology, canon law and Roman law has each its own field, but medieval learning was unified, and a consideration of all would benefit the student of any one of them.

L III/60, 324: Fr. Fidelis, O.F.M., Cap: Pontificiae interpretationes regulae franciscanae usque ad annum 1517. (Article).

A well documented but necessarily compressed article on the development of the Franciscan way of life under the direction of the Roman Pontiffs from Honorius III to Leo X. In two appendices F. gives a useful chronological summary and an alphabetical list of papal documents relating to the Franciscan Rule promulgated during the period covered by the article.

L IV/60, 435: Fr. Fidelis, O.F.M., Cap: De vivae vocis oraculis circa regulam franciscanam. (Article).

Franciscan legislation as it has developed with the aid of papal *viva voce* decisions. A treatment of the legal importance and practical value of such pronouncements. A chronological list of these declarations (with subject matter summarised) from Benedict XI to Gregory XV is added. The article is well documented.

RDC III-IV/60 & I/61, 174-191: C. Lefebvre: Un texte inédit sur la procédure rotale. (Article).

Cf. cn 1598 below.

LIBER I: NORMAE GENERALES

- 1 Per IV/60, 489-496: A. Wuyts S.J.: *Nota de praecedentia Patriarcharum.*

An authentic interpretation of cn 215 § 2 of *Cleri sanctitati* and a new norm formulated to replace § 2 clarifies the question of precedence as between Patriarchs and Legates. Though lacking the episcopal character a Legate precedes a Hierarch who is neither a Cardinal nor a Patriarch. But a Patriarch, to have precedence, must be in his own territory and preside over ceremonies or services of his own rite; even in this case the Legate can enjoy precedence by mandate of the Supreme Pontiff. (Oriental Code Com. 23/6/58.)

Cn 215 § 2 was obscure and Orientals interpreted it as giving precedence to Legates. The Oriental Code Com. decided against this interpretation on the grounds that the cn, by giving Legates precedence over Hierarchs, did not thereby give them precedence over Patriarchs: “. . . cum nomine *Hierarchae* non veniat *Patriarcha* . . .” W. recognises this but maintains that, since all Patriarchs have an Eparchy, a strict interpretation of the cn would give Legates precedence in the Patriarch’s own territory—precisely where he has most authority.

W. gives an historical outline of the problem of precedence and shows its importance in relation to union. The precedence of Cardinals over Patriarchs can no longer be disputed. (*Cleri sanctitati* cn 185 § 1 n. 21.)

- 9 CR 12/60, 738-41: L. L. McReavy: *Anticipated use of the New Rubrics.* (Reply).

Advantage could not be taken of the newly promulgated code of rubrics during the period of *vacatio* which had been precisely defined to ensure an orderly change over.

- 17 IDE IV/60, part 1, 421-580: A. Gomez de Ayala: *La commissione per l’interpretazione autentica del codex juris canonici e il canone 17.* (Article).

After a detailed and precise introduction, clarifying the interpretation of cn 17, the nature of the Motu Proprio *Cum juris canonici* and their relation to each other, the author comes to the kernel of the problem, *i.e.*, whether the responses of the Code Commission are really laws or not. His conclusions are: (1) The P.C.I.C. has a precedent, though not an exact parallel, in the Congregation of Cardinals established by Sixtus V. (2) The responses of the P.C.I.C. are not laws, even when they are given per modum legis. (3) It is not a legislative

body; it has no spontaneous power; its constitution is typical of a consultative body; it has not the potestas supplendi legem, nor has it the power to interpret law contrary to the will of the legislator, nor the power envisaged in cns 9 and 10, *i.e.*, to make responses retroactive, to prolong, shorten or suppress the *vacatio legis*. In brief, the P.C.I.C. has no legislative power.

18 EJC I-IV/59, 9-28: C. Lefebvre: De Orientalis Codificationis auctoritate ad Codicis Iuris Canonici interpretationem. (Article).

Has the Code of the Oriental Church a genuine value in the interpretation of the "Codex Iuris Canonici"? Yes, provided: (1) as far as the Latin Code is concerned, there is question of a canon which is (a) genuinely doubtful, (b) "dubio iuris," and (c) concerning which reasons of at least intrinsic probability have been advanced in favour of the various views; and (2) as far as the Oriental Code is concerned, that there is question of a canon which bears a genuine similarity and which is strictly parallel to that which is doubtful in our Code. Granted these conditions, we may safely conclude, not to an express statement of the legislator's will concerning the Latin Code canon, but rather to a genuine, though non-authentic, interpretative norm, a norm which generates not just a greater probability but a real certainty which dissipates the legal doubt. L. concludes by illustrating the application of these principles to a number of C.J.C. canons: 98 § 3; 101 § 1; 105 § 1; 201 § 3 and 205 § 1; 368 § 1; 476 § 3. The article refers extensively to recent contributions on this controverted subject.

25ff EJC I-IV/59, 29-34: L. Prosdocimi: Esquisse Historique sur l'Origine d'une doctrine de l'Usage en Droit Canonique. (Article).

Brief historical review of the development, principally among the 12th-13th century Decretists, of the canonical doctrine of custom. Taking as his starting-point Isidore of Seville (as preserved in *Decretum Gratiani*), P. outlines in particular the gradual decretist precisioning of the distinction between a mere practice ("mores") and a genuine custom ("mos seu consuetudo"), the latter becoming a real source or form of law, the former remaining one of the prerequisites, one only of the constituent elements of legal custom.

42 § 1 CR 7/60, 422-6: L. L. McReavy: Certain Disparity of Cult Represented as Doubtful. (Reply).

A marriage in which, though the non-Catholic party had declared under oath that he was not baptized, the priest

inadvertently sought and obtained the more usual dispensation from mixed religion, including *ad cautelam* disparity of cult, cannot be declared null by the summary process of cn 1990, because it is not immediately evident, on any of the four possible grounds which might be alleged, that the dispensation from disparity of cult was certainly invalid. A formal process will therefore be required to settle the doubt.

42§ 1 Per III/60, 262-4: A. Szentirmai: Quaesita minora.

III. Can a petitioner be guilty of subreptio if he withholds a fact which is favourable to him in order to save time? Yes. Three examples are given in which Caius requests dispensations from crimen, the irregularity of bigamy and non-consummated marriage. He does not mention the probable (in the first case) or certain invalidity of the marriages involved. As regards the process *super rato* the Instructions of S.C.S. 7/5/23 (n. 4) and 15/8/36 (art. 206) implicitly forbid petitioning when the marriage is probably null and, despite cn 42 § 1, if in fact there is no marriage, the rescript is of no value because it attempts the impossible. In the external forum a subsequent marriage of the petitioner should be regarded as invalid until the nullity of the first is established. In the other cases the same difficulties do not arise. But in every case it is more prudent to give all relevant information and to ask that the case be handled summarily. The dispensations can be granted *ad cautelam*, and subreptio and its punishments are thus avoided.

66 Per III/60, 341-405: L. Buijs S.J.: Formula facultatum decennialium (et) commentarius.

The text of the new formula of S.C.P.F. with a detailed commentary.

66 CM 10/60, 361-386: F. Timmermans S.J.: The New Decennial Faculties granted by S.C.P.F. (Article).

T. gives the text of the Faculties and a commentary.

80 RfR VI/60, 339-341: J. F. Gallen, S.J.: The nature of the power of dispensing possessed by lay religious superiors. (Reply).

In the supposition that the rule and constitutions are ecclesiastical laws (which is the more common opinion), G. holds that we have no satisfactory explanation of the nature of dispensations given by lay superiors, since they demand the power of jurisdiction, and these superiors possess only dominative power.

- 84 RfR VI/60, 342: J. F. Gallen, S.J.: Dispensation from religious rule without sufficient reason. (Reply).

The opinion that rules and constitutions are not ecclesiastical laws is solidly probable (despite the more common opinion to the contrary). Therefore it is safely probable that a dispensation from them without sufficient reason is valid.

LIBER II: DE PERSONIS

- 87 Per IV/60, 417-457: W. Bertrams, S.J.: De influxu Ecclesiae in iura baptizatorum. (Article).

The fundamental rights of the baptised are rooted in the supernatural personality that Baptism creates. This personality is not *granted* by the Church. She only *recognises* what necessarily results from union with Christ and, although union with Christ means also union with the Church, *in signo rationis* the supernatural personality and its inherent rights exist before aggregation to the Church. Therefore she cannot deprive the baptised of such fundamental rights as are necessary for the attaining of their supernatural end.

But the elevation of the individual to the supernatural level, his capacity to tend by personal, free activity towards the supernatural end, demands that the Church, as custodian of the means of salvation, should externally organise and safeguard the *exercise* of rights when the common good requires it.

These principles explain the nature of the Church's intervention when she controls the rights of baptised non-Catholics, when she deprives delinquents of supernatural benefits, and when she imposes an essential external "form" on which the validity of certain juridic acts will depend. In no case is there a deprivation of rights; there is only a restriction of their use.

- 94 § 1 Per III/60, 255-262: A. Szentirmai: Quaesita minora.

I. Is a domiciled titular Bishop subject to the jurisdiction of the local Ordinary? A domiciled titular Bishop is not subject to the jurisdiction of the local Ordinary except in the judicial sphere and only in contentious causes. The various kinds of jurisdiction are considered and excluded. Voluntary administrative jurisdiction presents a difficulty—*favores ampliari convenit*—but S., whilst recognising that the accepted practice is for titular Bishops to get from local Ordinaries consent for publication of books, stresses the need for the Holy See's intervention when there is question of retaining or accepting benefices.

II. Is delegated jurisdiction validly conferred on one who is not a subject and who does not request the delegation? Unless delegation is requested the local Ordinary cannot validly delegate jurisdiction to a cleric who is not his subject by incardination. Although cn 94 § 1 applies to clerics, domicile without incardination gives the local Ordinary only a limited jurisdiction clearly determined by particular cns. In cns 124-144 a distinction is made between the proper Ordinary of an incardinated cleric (*e.g.*, cns 127-8) and the local Ordinary (*e.g.*, cns 125, 130 § 1, etc.). As long as a cleric is not incardinated he is not bound by obedience to accept delegated jurisdiction, and therefore the local Ordinary cannot validly confer it.

- 98 ACR III/60, 219-225: G. C. Gallen: Position concerning rite of non-Catholic of the Oriental Rite on his conversion to the Catholic Church. (Reply).

Explanation of the norms governing transfer from one Oriental rite to another, or to the Latin Rite on conversion. A baptized or unbaptized non-Catholic of an Oriental rite, who wishes to become a member of the Catholic Church, may now freely choose any Oriental rite or the Latin Rite without any necessity of obtaining authorization of the Holy See for the transfer in any case.

- 98 § 3 EJC I-IV/59, 9-28: C. Lefebvre: De Orientalis Codificationis auctoritate ad Codicis Iuris Canonici interpretationem. (Article).

Cf. cn 18, above.

- 101 § 1, 2° RfR VI/60, 353-355: J. F. Gallen, S.J.: Changing religious constitutions. (Reply).

It cannot be maintained that *any* change in the constitutions falls under this canon and thereby demands the unanimous approval of all the members of the institute. Matters that are governed by this canon are those that directly, primarily and principally affect individuals as such, *i.e.*, the deprivation of a personal right or the imposition of a new personal obligation.

- 101 § 1 EJC I-IV/59, 9-28: C. Lefebvre: De Orientalis Codificationis auctoritate ad Codicis Iuris Canonici interpretationem. (Article).

Cf. cn 18, above.

- 104 EJC I-IV/59, 35-66: P. Fedele: "Error recidens in conditionem" nella dottrina degli atti giuridici in Diritto Canonico. (Article).**

This is a substantial contribution to the problem raised by cn 104, which has application throughout the Code and especially in regard to marriage: namely, are the two concepts "error" and "condition" incompatible one with the other, so that the phrase in this cn "error . . . si recidat in conditionem sine qua non" becomes meaningless?—or, e contra are there circumstances in which the two may co-exist? F. examines at length the teachings of both canonists and the Rota, and inclines, against the bulk of opinion, to the view that the two concepts are exclusive one of the other. The article requires detailed and careful study.

- 105, 1° EJC I-IV/59, 9-28: C. Lefebvre: De Orientalis Codificationis auctoritate ad Codicis Iuris Canonici interpretationem. (Article).**

Cf. cn 18, above.

- 120 IER 10/60, 237: T. Cunningham: The Privilege of the Forum. (Reply).**

Explanation of the scope of this privilege and the penalties for violation (cn 2341). The privilege is enjoyed by all clerics and by religious and novices of both sexes. It is violated by bringing one who enjoys it before a lay tribunal without the necessary permission. *i.e.*, summoning him there as defendant or accused, putting forward a plaint or charge against him. Thus the plaintiff (in civil cases) and prosecutor (in criminal cases) would violate the privilege. Those who co-operate or are accomplices in the plaint or prosecution and also those without whose help there would have been no action or prosecution are equally guilty of violating the privilege (cn 2209, §§ 1-3; 2231). Canon law is safeguarded if permission is obtained to bring the case to a lay court, and this should not be refused without serious and just reason. Although the privilege is part of the general law of the church, it does not operate in all countries. It has been modified by concordats in some places, or superseded by contrary custom, or by a practice that is tolerated by ecclesiastical authority (*e.g.*, Ireland).

- 135 CR 11/60, 641-50: J. B. O'Connell: The New Code of Rubrics for the Breviary and Missal. (Article).**

An annotated summary of the new code of rubrics, promulgated 25th July, 1960.

- 141 EJC I-IV/59, 140-153: F. Poggiaspalla: *La Chiesa e la Partecipazione dei Chierici alla Guerra nella Legislazione Conciliare fino alle Decretali di Gregorio IX.* (Article).

P. traces from apostolic times, in the history of the Councils, the constancy of the legislative prohibition against clerics bearing arms or taking part in war: a prohibition based upon their singular and exclusive dedication to the "things of God," not to be defiled by the shedding of blood, however justified this may be in certain circumstances: "il divieto è costante e severo, e dalla più antica disciplina passa immutata alla nuova e vigente."

- 142 CBG III/60, 405-419: W. Dumon: *Het Verbod aan Geestelijken en Gelijkgestelden tot Handeldrijven en Zaken Doen.* (Article).

This article comments at great length on canon 142 and on the new penal law enacted by the S.C.C., 22/3/1950. *Negotiatio politica* consists in buying goods with the intention of selling them, even at a higher price, to members of a certain community or to a certain group of people; it is strictly forbidden if it is equivalent to actual *negotiatio lucrativa*. Though this is not always the case, the author warns against possible self-deception in these matters and against the danger of thus arousing resentment or giving offence to the faithful; he advises consulting the local Ordinary in delicate cases.

As to the *excommunicatio latae sententiae*, provided for by the decree of 1950, the author calls attention to the fact that every delict supposes materially and formally grave sin; the duration of the activity, the sums of money administered, the scandal caused, etc., will have to be taken into consideration.

- 184 RfR V/60, 304: J. F. Gallen, S.J.: *Right of resignation.* (Reply).

Application of cn 184 to appointed religious superiors and officials. If it is not excluded by the law or usage of the institute, a superior has the right of resignation.

- 196 EJC I-IV/59, 67-95: G. di Mattia: "*Iurisdictio Quasi-Episcopalis*" e Altare Papale nella Basilica Patriarcale e Cappella Papale di S. Francesco in Assisi. (Article).

An enquiry, based on a detailed study of pre-Code sources, into the interpretation of the phrase "*et ii qui iurisdictionem habent quasi-episcopalem*"—the concluding, global phrase indicating those, not already named, who may celebrate Mass at the papal altar—in the "Ceremoniale" attached to the Bull

Fidelis Dominus, whereby Pope Benedict XIV (25/3/1754) constituted the Church of St Francis at Assisi a Patriarchal Basilica and a "Cappella Papale." The phrase, *M. decides*, means those, not being Bishops, who enjoy "potestas iurisdictionis ordinaria in foro externo." He concludes with an enumeration of the persons herein comprised.

- 201 § 3** EJC I-IV/59, 9-28: C. Lefebvre: *De Orientalis Codificationis auctoritate ad Codicis Iuris Canonici interpretationem*. (Article).

Cf. cn 18, above.

- 205 § 1** EJC I-IV/59, 9-28: C. Lefebvre: *De Orientalis Codificationis auctoritate ad Codicis Iuris Canonici interpretationem*. (Article).

Cf. cn 18, above.

- 209** PM 12/60, 24-27: L. Bender, O.P.: *Liceità del confessare fuori giurisdizione*. (Article).

Cf. cn 879 below.

- 248** ME IV/60, 541-576: Decree of the S.C. Consist., 13/2/1960. *De clericis ex America Latina necnon ex insulis Philippinis in Americam Septentrionalem emigrantibus*.

It is solely within the competence of the S.C. Consist. to grant permission to priests from the Philippines or from South America, who wish to go to North America or to Canada for any length of time, short or long, indefinite or permanently. Nuncios, Internuncios and Apostolic Delegates may give the same permission for priests living in the nations where they exercise their office, exclausted religious priests, as also religious priests who have been dispensed from their vows and have been accepted by a benevolent bishop either absolutely or for a period of probation.

Copious annotations have been added by Card. Joseph Ferretto, which were written when he was Assessor to the S.C. Consist. He gives the decrees of former Pontiffs in regard to this matter, comments upon them, and on pages 570-574 he gives some useful examples of the rescripts "migrandi et commorandi" used for the S.C. Consist.

- 281** IER 10/60, 234: T. Cunningham: *The Decrees of the Plenary Council of Maynooth, 1956*. (Notes).

The Acts and Decrees of the 1956 Plenary Council of Maynooth were promulgated in cathedral churches of Ireland

on 15 August 1960, and began to bind on 15 November 1960. In this and in following issues (11/60, 311; 12/60, 371) C. gives a short review of the most noteworthy changes introduced in the new decrees. The changes are not many, the vast majority of the decrees merely repeating, and thus reaffirming the importance of the laws of the previous Plenary Council.

291 § 2 CR 12/60, 743-6: L. L. McReavy: The Authority of a Provincial Council. (Reply).

Discusses whether and in what circumstances a bishop would legislate vainly *contra ius superius*, if he required his subjects to fast on more days in the year than is required by the provincial council. (By inadvertence, the fast formerly attached to the eve of the Assumption is incorrectly described as transferred to the eve of All Saints.)

356 L IV/60, 389: Fr. Antoninus, O.F.M. Cap: Synodi Romanae Primae prospectus generalis. (Article).
Cf. General subjects, above.

368 § 1 EJC I-IV/59, 9-28: C. Lefebvre: De Orientalis Codificationis auctoritate ad Codicis Iuris Canonici interpretationem. (Article).

Cf. cn 18, above.

451 PM 12/60, 17-23: G. Lardone: Parrocchie all'asta. (Article).

The author discusses the various ways of conferring a parish. *Libera collatio* gives the bishop the greatest liberty of action in the destination of his priests. The criterion is always the greater good of souls. The personal wishes of the priests can also be taken into account.

472 § 2 PM 11/60, 612-617: L. Bender, O.P.: Sacerdos assumens regimen paroeciae vacantis. (Article).

This cn does not define the nature of the power given to the priest assuming the government of a vacant parish according to the rules given. Cn 309 § 4 however is a parallel case and so we find that the jurisdiction is *delegata a iure* and not ordinary power. He rules the parish "*usque ad oeconomii constitutionem*." Therefore he rules up to the moment of the appointment (*constitutio*) made by the Ordinary and its acceptance—not to the beginning of the exercise of that office.

476 P 8/60, 723-4: P. R. Coyle: Canonical Status of Curates. (Reply).

Is Vicarius Co-operator an office in the strict sense? Yes. Because ordinary power is not necessary for an office. A guarantee of delegated power for each specific erection of office suffices. Cn 476 § 1 implies such a guarantee. An assistant not given such a power is not a vicarius co-operator.

476 § 3 EJC I-IV/59, 9-28: C. Lefebvre: De Orientalis Codificationis auctoritate ad Codicis Iuris Canonici interpretationem. (Article).

Cf. cn 18, above.

LIBER II, PARS II: DE RELIGIOSIS

- 487 EJC I-IV/59, 96-102: G. M. Benucci: *Institutorum Saecularium Aspectus et Momentum*. (Article).

A brief sketch indicating the novelty, development and importance of Secular Institutes. Their place in the Church's legal system is understood only if it is appreciated (a) that they belong to the juridical (not the "canonical") state of perfection; (b) that they are secular (not "religious") associations; and (c) that their primary purpose is to exercise the apostolate of today within the framework of ordinary social and professional activities. A brief bibliography is appended.

- 495ff RfR IV/60, 240-247: J. F. Gallen, S.J.: *Local houses and superiors*. (Replies).

A continuation of the series of questions and answers on local houses and local superiors begun in RfR II/60 (Cf CLA 5, 18). Further questions on canonical erection of houses, filial houses, suppression; and 22 questions on local superiors—minimum age, term of office, appointment of superiors, obligations of superiors.

Cf. cn 184 above and cns 505 and 509 § 2, 2° below.

- 499 PdC 24/60, 1326-1329: A. Boni, O.F.M.: *De obligatione religiosorum obediendi Romano Pontifici vi voti obedientiae*. (Article).

Originally religious profession could be made immediately *in manibus Ecclesiae*, without enrolment in any particular Order; since Trent only mediately, through membership of a religious institute. But its juridical nature has not changed, the passive subject of religious profession still being the Church. B. maintains that by profession every religious vows obedience to the Pope expressly (not implicitly), although only mediately; thus the Pope exercises over them full *potestas dominativa*.

- 500 PM 10/60, 545-553: A. Pugliese: *Di alcuni rapporti tra Ordinario locale e Religiosi esenti*. (Article).

The bishop who receives into his diocese unconditionally a religious community has no right to stop their characteristic and proper apostolate afterwards. Thus if he receives a clerical community, they have a right to erect a church or public oratory *adnexum domui*. They must ask his permission concerning the determination of the place but it must be *adnexum domui*. He can decide what street it is to open on

to, etc., and for this he need not consult anybody. If they begin to build without this necessary licentia the bishop may stop the building but only to approve or modify the construction site. The S.C. Relig. usually demands the beneplacitum of the Ordinary before it allows a religious community to withdraw from a diocese, unless it is not being allowed to exercise its proper apostolate.

501 VR V/60, 388-392: B. Frisón, C.M.F.: La Cruz de la Autoridad en las Federaciones. (Article).

Discussion of authority in federations of monasteries of nuns. These remain sui juris except with regard to the objects of the federation. While the principal object is mutual fraternal help, the union is juridical and not merely moral. The federation is a collegiate moral person with authority to pursue its ends. Outside the Chapter, ordinary authority is vested in the Mother President, who cannot command in virtue of the vow of obedience but has dominative power based on the act of federation. This extends to the monasteries as such and to the individual nuns only through the monasteries of which they form part. The right to command supposes in the subject a corresponding duty to obey.

504 CpR V-VI/60, 421-424: S. Goyeneche, C.M.F.: Two Cases of Invalid Election of Major Superiors. (Reply).

A religious of illegitimate birth is elected Superior General. The election is invalid. If the Constitutions do not forbid it, the candidate may be postulated in a new election. If the impediment is known only to the candidate, G. says he is not bound to betray himself but may secretly approach the Holy See for a dispensation. If the matter is entirely secret cn 209 applies.

A nun of illegitimate birth receives two-thirds of the votes in the final scrutiny for the election of the Abbess. The fact of illegitimacy is known only to two old, prudent members of the community. Its revelation would cause grave harm. G. says the election is invalid and the votes do not count for postulation as this is not expressed in them even tacitly. Solution: approach the Holy See; if this is impossible and there is no danger of revelation, leave them in good faith, as cn 209 applies.

505 RfR IV/60, 243-247: J. F. Gallen, S.J.: Term of office and reappointment of minor local superior. (Reply).

In reply to 7 questions G. comments on cn 505.

- 505 RfR V/60, 302: J. F. Gallen, S.J.: Computation of term of office. (Reply).**

The duration of a term of office is computed according to the norm of cn 34 § 3, 5°.

- 509 § 2, 2° RfR VI/60, 384-386: J. F. Gallen, S.J.: Catechetical Instruction and Religious Exhortation. (Reply).**

G. explains the obligation of the Code in this matter.

- 513 § 1 VR IV/60, 342-3: A. Peinador, C.M.F.: Secreto Profesional. (Reply).**

Professional secrecy is clearly violated by a Visitor who informs a local superior what a particular individual in the community has said of him. The matter is a grave one. No less grave is the conduct of a local superior who thereupon molests the individual. Such a superior should be deprived of his office, in accordance with cn 2413.

- 537 VR IV/60, 344-6: G. Escudero, C.M.F.: Regalos y Limosnas. (Reply).**

The charity practised in almsgiving by religious must be well-ordered. Community goods, therefore, may be given away only for a just cause, *e.g.*, alms, with the permission of the superior, and in conformity with the constitutions. The goods mentioned in the cn are not the goods of individual religious (which come under the vow of poverty) but the non-precious movable goods of the institute. Immovable goods or their equivalent (capitalized or precious goods) are not objects of gratuitous donation but only of onerous alienation, which is governed by the stricter laws of cn 534.

- 542 VR V/60, 417-9: G. Escudero, C.M.F.: Impedimentos para la Admisión. (Reply).**

Power to dispense from disciplinary norms does not enable superiors to dispense from impediments to admission established by the constitutions, since these are not disciplinary norms.

- 542 2° HPR 8/60, 977-980: I. R. Segarra: Priest Members of Secular Institutes. (Article).**

Membership of a Secular Institute can be in the strict sense or in the wide sense. Members in the strict sense must aspire to the three evangelical counsels in one of the forms recognised by the Apostolic Constitution *Provida Mater Ecclesia* of Pius

XII. Members in the wide sense aspire after evangelical perfection while still living in their own state, even though they do not or cannot embrace each evangelical counsel in the highest degree.

In a Secular Institute specifically for diocesan clergy the distinction between the two kinds of members will be found in the de facto dependence on the Institute. A priest who is in complete dependence on such an Institute is a member in the strict sense. (He is still incardinated de jure in his diocese.) Priests in the Institute who have not this special dependence on it will be members in the wide sense. This explains the praxis of the S.C. Relig. which regards the prohibition of cn 542, 2° as being applicable only to a priest wishing to become a member in the strict sense.

If a Secular Institute is not exclusively for the diocesan clergy, only those members of the diocesan clergy who lose their incardination will be members in the strict sense.

565 § 2 RfR VI/60, 384-386: J. F. Gallen, S.J.: Catechetical Instruction. (Reply).

Cf. cn 509 § 2, 2° above.

569 § 1 VR V/60, 414: A. Peinador, C.M.F.: Voto Simple de Pobreza y Uso o Usufructo del Capital. (Reply).

If the constitutions do not forbid it, a religious in simple vows may accumulate to his capital whatever this produces.

571 § 2 VR V/60, 419-420: M. C. de Anta, C.M.F.: Prórroga del Noviciado. (Reply).

Lawful and reasonable action requires that prolongation of the novitiate be spent in the novitiate itself. Prolongation is not complied with if the novice is outside the novitiate for all or the greater part of this time. If for just cause the novice is outside the novitiate for some time during the prolongation, he must return two months before profession and be engaged for this time exclusively in spiritual preparation.

577 CR 8/60, 488-9: J. B. O'Connell: Renewal of Religious Vows. (Reply).

Explains the origin of the practice of renewing vows before the Sacred Host, held aloft by the celebrant at the Communion, and gives details of the ritual prescribed, in 1894, by S.R.C. 3826, 3912.

580 CpR V-VI/60, 398-416: A. M. Card. Larraona, C.M.F.: *Commentarium Codicis*.

L. explains the present arrangement of this *cn* and *cn* 569 as compared with the early schemata of the Code. He notes that, while professed of simple vows unlawfully but validly dispose of their property, professed of temporary simple vows in an Order where solemn vows are taken may not validly dispose of their property until 60 days before solemn profession, *cn* 581. The various ways in which the Constitutions may limit the capacity for ownership are enumerated.

The reference in § 3 to § 2 of *cn* 569 appears erroneous. It should read §§ 1 and 2 or simply § 1 of *cn* 569, particularly as a change of disposition of administration, etc., is far more likely to be necessary if the original disposition was made prior to profession. By departure from religion in § 3 is meant dispensation from vows or dismissal or, probably, transfer, but not apostasy or fuga.

580 VR V/60, 420-1: M. C. de Anta, C.M.F.: *Aceptación de Donativos*. (Reply).

Refusal of gifts offered to a religious for his services is not contrary to poverty, but might be contrary to charity or obedience. Gifts *intuitu personae* accrue to the patrimony of a religious in simple vows, to the extent permitted by the constitutions: to the Holy See or the Order in the case of one in solemn vows. Unless the contrary is clear, they should be judged as given on the grounds of industry or *intuitu religionis*.

593 RfR VI/60, 323-367: J. F. Gallen, S.J.: *The Constitutions*. (Replies).

Questions, difficulties and cases on the constitutions of religious institutes, arranged under the following headings: 1. Obligation to strive for perfection; 2. Meaning and context of rule and constitutions; 3. Obligation of constitutions; 4. Excuse, permission, dispensation; 5. Change and authentic interpretation; 6. Knowledge, practice and public reading of decrees of the Holy See. Public reading and giving of a copy of the constitutions to each novice. Cf. *cns* 80, 84, 101 § 1, 2^o above.

580 § 1 ACR III/60, 225-229: G. C. Gallen: *War pensions and religious of simple vows*. (Reply).

A religious with simple and temporary vows is paid a war pension by reason of war injuries received by him prior to

reception into the Institute. He claims the pension is part of his patrimony, and he has the right to dispose of it within the terms of the Code. His religious superiors contend that it should be handed over to them. In the light of replies of the S.C. Relig. G. shows that it should be included in the document of cession of administration of property and disposal of income to be drawn up before profession. Thus the religious has the right to dispose of it within the terms of the Code.

631 CpR V-VI/60, 417-420: S. Goyeneche, C.M.F.: Visitation of Regular Parish Church. (Reply).

In virtue of cn 615 the local Ordinary may only visit churches of regulars in the cases expressly determined in the law. From cn 631 § 1 he has the right to visit regular parish churches to inspect what is strictly parochial. The extent of the local visitation is explained by Benedict XIV in *Firmandis* § 6. He may inspect the administration of parish property but not Mass registers.

642 HPR 11/60, 191-192: C. L. Parres, C.M.: Secularized Religious and Restrictions of Canon 642. (Reply).

The restrictions apply only to former religious who were in major orders and who had pronounced perpetual vows, or had temporary vows, oaths or promises for at least six full years. An ex-religious priest who is in one of the above categories may not be a diocesan consultor or confessor to nuns. If appointed however his appointment would be valid. There would seem to be no prohibition against appointing such a one vicar forane.

645 § 2 CpR V-VI/60, 424: S. Goyeneche, C.M.F.: Duty towards apostates. (Reply).

If apostates fail to repent or rectify their position they are to be dismissed *ad normam iuris*. The means to be employed to obtain their amendment is a matter for pastoral theology and charity rather than law.

682 CR 7/60, 395-411: R. Russell, O.S.B.: The Lay Apostolate—Its Place in Contemporary Theological Thought. (Article).

An exposition of the positive obligation of apostolate which is incumbent on all baptized members of the Church, but about which the Code of Canon Law is strangely silent, though subsequent Popes have emphasized and clarified it.

- 682 RDC III-IV/60 & I/61, 214-234: K. Mörsdorf: *Die Stellung der Laien in der Kirche*. (Article).

M. summarizes the theological views of Congar and Karl Rahner on the laity's place in the Church and relates these to the juridical distinction between laity and clergy. From cns 108 § 1, 107 and 211 he concludes that this distinction, in its fullest meaning, is based less on the tonsure than on the sacramental character of Order, and that therefore only deacons and priests are in the fullest sense clerics. There is a qualitatively different manner of sharing in the life and work of the Church, in the threefold power of ruling, teaching and sanctifying. The laity can share in the Church's teaching activity, receiving a real *canonica missio*, but without the teaching charisma conferred by ordination; they share in her sacramental and sacrificial life by active participation in the liturgy; and they are not entirely passive even in the ruling of the Church, since the Code gives them considerable influence in many spheres (for example, custom plays a part in the formation of law.) M. does not anticipate any great increase in the number of laws concerning the laity. He would prefer to see the artificial division of Book II (*De clericis—de religiosis—de laicis*) disappear, and more emphasis laid on the unity in action of Head and Body and the place of the laity in the Church's apostolate.

- 690 CpR V-VI/60, 420-421: S. Goyeneche, C.M.F.: *Visitation of Third Order Secular in Regular Church*. (Reply).

Where an Association is erected by apostolic privilege in exempt churches the local Ordinary has no right of visitation in internal matters. G. enumerates as internal matters the admission of candidates, appointment of directors and visitors, conferring of offices, spiritual direction, observance and interpretation of statutes, spiritual exercises, etc. External matters include administration of property, acts of public worship outside the exempt church. G. also notes that further privileges may modify the common law in this matter.

- 704 ST 11/60, 641: E. F. Regatillo: *Orden tercera secular*. (Reply).

A member of a secular institute can also be a member of a third order.

**LIBER III, PARS I: DE SACRAMENTIS: TIT. I:
DE BAPTISMO**

- 731 § 2 HPR 12/60, 239-243: E. R. Killackey, M.M.: Administration of the Sacraments to Dying Non-Catholics. (Article).**

A consideration of some practical problems involved in the application of cn 731 § 2, with suitable applications in regard to Baptism, Penance and Extreme Unction.

- 731 § 2 AfER III/60, 178: E. de Bekker, W.F.: Ministrations to Dying Non-Catholics. (Casus).**

Cf. cn 870 below.

- 752 HPR 9/60, 1182-1184: C. L. Parres, C.M.: Simple Form of Profession of Faith. (Reply).**

A shorter form of the Profession of Faith for young or uneducated converts was approved by S.C.S.O. 13/6/56 for use in the U.S.A. and it may be used there with the approval of the local Ordinary.

- 762 §§ 1, 2 ST 11/60, 642-643: E. F. Regatillo: Padrino al suplir las ceremonias del bautismo. (Reply).**

A child was baptized at home while in danger of death. His sister acted as godmother, but the intended godfather was absent. On completing the ceremonies in the church the intended godfather, Charles, was present and wished to act as godfather and to have his name entered as such. The parish priest resolutely refused to allow this. He acted wrongly, says R., for he could have admitted Charles as godfather, telling him that he had not thereby contracted any spiritual relationship with the child, and making sure that his name was entered as godfather only in the completion of the ceremonies.

- 779 P 12/60, 1099-1102: P. R. Coyle: Proving Non-Baptism. (Reply).**

It may be legitimately presumed that a person is not baptized in infancy if born and reared by parents belonging (a) to no sect; (b) to a sect which rejects Baptism; (c) to a sect which does not admit infant Baptism. (Reply S.C.S.O. to Bp of Savannah.) This with the convert's oath that he was not baptized since infancy proves non-Baptism. Other proofs—testimony of others and investigation of Church records in places where he might have been baptized.

**LIBER III, PARS I: DE SACRAMENTIS: TIT. II:
DE CONFIRMATIONE**

- 781 § 2 AfER III/60, 186: E. de Bekker, W.F.: Is the imposition of hands necessary for validity in confirmation? (Reply).**

One is still quite free to disagree with the opinion that a proper and distinct imposition of hands is demanded for valid Confirmation until Rome clearly reintroduces this rite as essential matter of the sacrament. (Cf. AfER I/60, 23; CLA 5, 26.)

- 782 § 2 ST 10/60, 571: E. F. Regatillo: Relación de las confirmaciones administradas por ministro extraordinario. (Reply).**

According to the decree *Spiritus Sancti munera* of the S.C.S. (14/9/1946) the local Ordinary had to send to Rome at the beginning of each year an account of the Confirmations administered by extraordinary ministers during the foregoing year. But the S.C.S. (1/7/1957) has suppressed this obligation. Now these extraordinary ministers need not send any account to the local Ordinary of any Confirmation administered by them.

**LIBER III, PARS I: DE SACRAMENTIS: TIT. III:
DE SSMA. EUCHARISTIA.**

- 804 P 8/60, 721-3: P. R. Coyle: Right of Strange Priests to Celebrate Mass. (Reply).**

Only a priest visitor presenting a celebret is legally entitled to say Mass in a strange church. Even then he has no right to celebrate habitually. On the other hand, the local Ordinary may not make a law that only such priest visitors may be allowed to say Mass. Is the P.P. bound to ask for the celebret if the priest is not known? Yes.

- 806 PdC 20/60, 1134-1135: Umberto da Arienzo, O.F.M.Cap.: Abusi nell' applicazione di Messe, il due novembre. (Reply).**

A religious ordered by his Superior to apply all three Masses on All Souls' Day *ad mentem dantis* and to say later the Masses for the Pope's intention and for the Holy Souls, is not bound to obey. U. is of the opinion, however, that in the absence of public scandal he would do well to obey: the illicitness is only extrinsic, and there would be sufficient reason to justify material co-operation.

- 806 PdC 22/60: 1218-1223: A. Boschi, S.J.: De causa sufficienti pro binatione. (Reply).**

The Ordinary cannot permit bination merely in order to provide seminarists with their customary second Mass; but the priests who celebrate these Masses may celebrate another Mass outside, in a place where bination is permitted by the Ordinary. B. examines also similar situations arising from the provision of Mass for religious and other communities.

- 806 § 1 HPR 8/60, 1015-1016: C. L. Parres, C.M.: Week-day Binations, Number Present. (Reply).**

Rescripts permitting bination on week-days, on the occasion of a wedding or a funeral, are given so that it will not be necessary to cancel other Masses scheduled daily for the faithful (including children) because of the lack of priests. The rescripts do not cover non-scheduled Masses. Indults which P. has seen make no reference to the number of people that must be involved, so he is of the opinion that there is no special requirement about the number of people likely to be present at any of these Masses.

- 806 § 2 CR 10/60, 604-10: J. de Reeper: Bination. (Article).**

After a brief history of bination and a list of the exceptions to the general prohibition of plural celebration, R. expounds the bination faculties nowadays granted to Ordinaries, and the rules regarding stipends, evening Masses, Eucharistic fast of a binating priest and purification of the chalice.

Cf. CLA 5, 28.

- 810 CR 9/60, 559-61: L. L. McReavy: Obligation of the "Gratium Actio post Missam." (Reply).**

A thanksgiving of some kind is a natural debt, but there is no proved obligation to make it according to the rubrical form. The newly inserted "Oratio universalis sub nomine Clementis Papae XI vulgata" is certainly optional.

- 814-5 CR 10/60, 620-2: L. L. McReavy: Insufficiently Baked Altar Breads. (Reply).**

It is certainly required for valid consecration that the matter be bread in the commonly accepted sense, and therefore a paste merely dried by exposure to heat is not enough; it must be baked by a dry heat of the order of 450°-500° F., which acts by conduction rather than radiation. Positive doubt on this point must be solved by investigation.

- 818 CR 11/60, 641-50: J. B. O'Connell: The New Code of Rubrics for the Breviary and Missal. (Article).**

Cf. cn 135 above.

- 821 § 1 HPR 9/60, 1176-1180: C. L. Parres, C.M.: Monitum of Holy Office 1955, and Evening Mass. (Reply).**

The above monitum issued with regard to the use of *Christus Dominus* still remains in effect even after *Sacram Communionem*. On this point the two are not at variance with each other. *Sacram Communionem* extended the Ordinary's power as regards the days on which evening Mass might be permitted, but did not extend the reason for allowing it on a particular day. It can still be granted only for the common good of the faithful.

- 821 § 1 ST 8-9/60, 509-510: E. F. Regatillo: Binación Vespertina. (Reply).**

In a working class district the P.P. has permission to binate and say an evening Mass. When he cannot binate he asks a religious to say the evening Mass for him. May the religious say his morning Mass of devotion and then the parish evening Mass? Sometimes the P.P. cancels the evening Mass at the last moment.

R. If the religious is morally certain that there will be an evening Mass, he may not say Mass in the morning. If there is a real probability that it will be cancelled, he may celebrate in the morning, and then binate in the evening if necessary. If he did not celebrate in the morning and the evening Mass is cancelled, he may say a Mass of devotion in the evening in the community chapel privately.

- 824 § 2 HPR 8/60, 1016-1020: C. L. Parres, C.M.: Two "Missae pro Populo" on Sunday. (Reply).**

If a pastor is legitimately prevented from offering the Missa pro populo on a particular day, it is a probable opinion that when binating on the following Sunday he can satisfy this obligation by offering two Missae pro populo. In this matter the provision of cn 339 § 6, directing that such an omitted Mass be said "quam citius," must not be forgotten.

- 824ff ST 7/60, 413-425: E. F. Regatillo: Prescripción de estipendios y cargas de misas. (Article).**

Cf. cn 1509, 5° below.

- 831-2 HPR 9/60, 1180-1182: C. L. Parres, C.M.: Accepting Lower Stipend. (Reply).**

The regulation of the manual Mass stipend is entirely within the power of the local Ordinary. He may forbid the acceptance of a stipend smaller than that which he has determined; but he may not forbid the acceptance of a greater stipend freely offered. He cannot forbid a priest to apply a Mass out of charity without any stipend.

- 855 J IV/60, 419-427: J. Lover, C.S.S.R.: Is fraternal cohabitation essentially a moral problem? (Article).**

In this article L. begins by stating the fundamental principles governing fraternal cohabitation or the "brother-sister arrangement," and then goes on to a fuller discussion of what is implied in each of these conditions. He takes the position that these cases remain primarily and essentially moral problems and demand great delicacy of judgment on the part of those who must solve them.

- 856 CR 8/60, 484-6: L. L. McReavy: Communion after Mortal Sin without Previous Confession. (Reply).**

One who, after committing a mortal sin, makes an act of perfect contrition, but inexcusably neglects to confess before communicating, certainly violates a grave precept, the only dispute being whether it is divine or ecclesiastical in origin. The moral species of the violation is that of sacrilege, because the purpose of the law is reverence for a sacred thing.

- 858 P 8/60, 703-6: J. E. Coogan: Notes on the Eucharistic Fast. (Article).**

(1) *Sacram Communionem* says liquid may be taken until one hour beforehand. Some AAs (listed) say the substance need not be liquid before it enters the mouth. It is sufficient if it is liquid when swallowed. Ice cream, for example, is then liquid. (2) Some AAs (two listed) say that solid food qualifies as medicine if so prescribed by a doctor. (3) Some AAs (two listed) say that alcoholic liquid when prescribed by a doctor can be regarded as true and proper medicine.

- 858 AER 11/60, 331: A. Holzmeister, O.F.M.Cap.: The Eucharistic Fast. (Article).**

A commentary on the latest legislation. Generally follows Matt. Conte a Coronata in the *Jus Seraphicum* (1958), pp. 543, ff.

- 858 AfER III/60, 184: E. de Bekker, W.F.: Observing the Eucharistic fast time limits. (Reply).**

B. insists that the time limits of the Eucharistic fast be observed strictly and sub gravi. A person in insoluble doubt as to whether or not the full one/three hours required has elapsed, is not to be excluded from Communion.

- 867 § 4 Per III/60, 321-340: F. Hürth, S.J.: Decretum de S. Communionis distributione postmeridianis horis: Annotationes.**

The decree (S.C.S.O., 12/3/60) continues the work of *Sacram Communionem* and should be included under the same official title: *Indulta extenduntur*. It grants a further faculty whereby Holy Communion may be distributed in association with a sacred function—other than evening Mass—to be determined by the local Ordinary. At the same time it declares that, although the last clause of cn 867 § 4 is not formally abrogated, it can now rarely be applied.

H. comments on the documents quoted in the Decree with particular reference to the question of time for distributing Holy Communion. N. 15 of *Christus Dominus* did not establish the evening as a de jure time of Mass, and therefore it was not a time for Communion apart from Mass. Neither was N. 15 affected by the further concessions of *Sacram Communionem*. In the new decree N. 15 is for the first time officially adduced as limiting the application of the last clause of cn 867 § 4 which may now be used only in exceptional circumstances. The easing of the Eucharistic fast and the opportunities for Holy Communion outside times provided for in common law are intended to promote the common good. This purpose is explicitly mentioned in the new decree, but it also intends to safeguard the pastor of souls against unreasonable demands which might hinder his exercise of the apostolate.

- 867 § 4 CM 6/60, 226-227: F. Timmermans, S.J.: Communion in the afternoon. (Article).**

A Decree of S.C.S.O. (21/3/60) grants to local Ordinaries the power to allow Holy Communion to be distributed in places where no evening Mass is celebrated, during, immediately before or after other sacred functions held in the evening and determined by them.

T. considers that, although oratories of religious houses are not mentioned in the decree, they would not be excluded. T. also foresees that there will still be cases of people wanting

to receive Holy Communion in the afternoon in places where there is no evening Mass or evening service, or where the Ordinary has not granted the faculty to distribute Holy Communion during these services. In these cases the clause of cn 867 § 4 can still be verified, and, granted a reasonable cause, the priest will be entitled to give Holy Communion in the afternoon outside of Mass or of a sacred function.

867 § 4 HPR 9/60, 1184-1190: C. L. Parres, C.M.: Evening Communion outside of Mass. (Reply).

It would be in accordance with the decree of S.C.S.O., 21/3/60 to distribute Holy Communion at a weekly evening novena, if the local Ordinary granted permission for this. The decree limits the faculty to churches and oratories of hospitals, prisons and colleges. The ordinary rubrics of the Roman Ritual for the distribution of Holy Communion apply to such a function.

**LIBER III, PARS I: DE SACRAMENTIS: TIT. IV:
DE POENITENTIA**

- 870 AfER III/60, 178: E. de Bekker, W.F.: Ministrations to dying non-Catholics. (Casus).**

(a) Fr John visits an honest and sincere Lutheran who is dying. The sick man receives him well and is ready to listen to his exhortations, but he is not prepared to abjure his errors. Should he make at least a general confession of sinfulness, Fr John should rebaptise conditionally (if there is any doubt about the man's Baptism), and give him absolution and Extreme Unction—at least conditionally. The very least Fr John should do is move him to an act of perfect contrition.

(b) Fr John rushes to the scene of a grave accident in which some strangers and a Protestant, well known for his anti-Catholic feelings, are dying. The best procedure would be firstly to give general absolution, then conditional Baptism and Extreme Unction to each one (a single unction for each), and the apostolic blessing in the short, plural form. He should then try to prepare those still conscious to die in as perfect sentiments as possible.

- 879 PM 12/60, 24-27: L. Bender, O.P.: Liceità del confessare fuori giurisdizione. (Article).**

B. discusses the liceity of deliberately using common error in confession. He holds it a grave sin—at least objectively—against Cappello for whom it is *solide probiliter* only a venial sin. It is grave because the law violated is a grave one. It is grave *ratione materiae* and furthermore the fact that a censure is attached by *cn* 2366 further proves its gravity. The common teaching tells us that a penalty (censure) is attached only to grave precepts. What is forbidden and punished is not “to absolve invalidly” but “to hear confessions without the necessary (*debita*) jurisdiction.” The priest who hears confessions in common error really does hear them without the necessary jurisdiction—the Church supplies in common error for the lack of jurisdiction in the priest in order to avoid grave spiritual damage to the people. In a footnote he says that although a grave sin is committed by use of common error the penalties of *cn* 2366 may not be incurred as the *cn* has the word “*praesumpserit*.”

883 Per IV/60, 469-488: U. Navarrete, S.J.: De extensione facultatis absolvendi a casibus reservatis durante itinere maritimo vel aereo. (Article).

The power to absolve "etiam a casibus Ordinario loci reservatis" (§ 2), extends to cases reserved to the Ordinary by common law:—(a) The text makes no distinction; (b) the Ordinary cannot limit the exercise of jurisdiction he has not granted, so § 2 would cover cases reserved by him even if they were not mentioned; (c) the law grants jurisdiction because recourse would be difficult, but an Ordinary's cases are usually *ratione peccati* and reservation can easily cease (cn 900, 2°); common law reservations are all *ratione censurae* and recourse is almost always necessary.

N. also holds that, although reserved cases are mentioned only in § 2, passengers (§ 1) can be absolved from them. Given that recourse is especially difficult for them the legislator would not mean to exclude them. The letter of the law is against this, but an examination of the pre-Code texts on which cn 883 is based (§ 1—Decree S.O. 23/8/1905; § 2—Decree S.O. 13/12/1906) explains the unfortunate wording and gives a clue to the mens legislatoris. The second decree granted unrestricted jurisdiction over reserved cases of those who came on board; for those on shore it could be used only if it was difficult to contact the Ordinary and there was only one approved priest there; the legislator therefore intended chiefly to help those on board. But the confessor could not be expected to question penitents to distinguish passengers from the rest, and so his powers included *all* on board. If this was so while the ship was at rest it seems that the same would apply when she had put to sea.

901 P 11/60, 1007-1010: P. R. Coyle: Reception of Converts—Integral Confession? (Reply).

Must a doubtfully baptized convert make an integral confession of the sins of his past life at his reception? The content and background of pre-Code decrees on the matter are given. The Code is silent. The opinion denying the necessity of integral confession outside places for which a particular precept has been issued, by the Holy See or the Bishop, is probable and safe in practice. Yet it seems that the safer opinion should be followed.

924 § 2 HPR 10/60, 96: C. L. Parres, C.M.: Loss of Indulgence through Sale. (Reply).

Indulgences attached to rosaries and other objects of piety are lost if these objects are sold. The law makes no distinction

between private and public sale. Objects blessed after sale are not affected if the seller retains them until a blessing is obtained. If something is given for objects of this nature as an alms and not as a price the indulgence would not be lost.

- 931 HPR 11/60, 196-200: C. L. Parres, C.M.: Confession for Indulgences. (Reply).**

It is not necessary to confess oftener than every second week to fulfil the requirement of confession necessary for gaining indulgences. This is true whether there be question of the same indulgence or of different indulgences to be gained on the same day or on different days. Jubilee indulgences are exceptions to this rule.

- 933 AER 11/60, 348: F. J. Connell, C.SS.R.: Conditions for an Indulgence. (Reply).**

To gain several plenary indulgences attached to several different works, the "usual conditions" must be fulfilled the same number of times as the indulgences or works in question.

LIBER III, PARS I: DE SACRAMENTIS: TIT. V: DE EXTREMA UNCTIONE

- 940 § 1 HPR 10/60, 90-96: C. L. Parres, C.M.: Extreme Unction before a Serious Operation. (Reply).**

The lawfulness of administering Extreme Unction to a person about to undergo a serious operation will depend, not on the danger arising out of the operation (which is an extrinsic thing), but on the danger that arises from the sickness or malady that suggests the operation. One must consider the patient's condition independently of the impending operation. If he has some malady which constitutes a threat to his life, then he can and should be anointed. This is particularly true of an old person in such a condition, for his age may be an additional hazard.

- 942 AfER III/60, 178: E. de Bekker, W.F.: Ministrations to dying non-Catholics. (Casus).**

Cf. cn 870 above.

LIBER III, PARS I: DE SACRAMENTIS: TIT. VI:
DE ORDINE

984 1° AdC 33-36/60, 524-5: A. Huftier: Irregularité d'un fils de païens. (Reply).

In a country where polygamy is the universal and immemorial custom, a boy who is the child of pagan parents—the mother being his father's second wife (and the first is still alive)—has been instructed and baptised, and wishes to become a priest. Does cn 1363 § 1 affect him? After all, in his country his father's polygamy is considered completely natural and he himself is not considered illegitimate.

H. replies: the boy is not ineligible for orders because of the "impedimentum simplex" of cn 987, 1°: "filii acatholicorum," since "acatholici" in this context may be taken to refer to *Christian* non-Catholics (this is a controverted point, but the pre-Code law supports this view, and cn 6 is to be applied accordingly). He is, however, ineligible for orders because of the "irregularitas ex defectu" of cn 984, 1°. This irregularity on account of illegitimacy is not a sanction (cf. cn 985: irregularity ex delicto), but the Church, the upholder of the natural law in all its fullness, has seen fit to make illegitimacy an impediment to orders—which may, however, be dispensed in deserving cases.

985 Per III/60, 264-6: A. Szentirmai: Quaesita minora.

IV. Are the irregularities of this cn vindictive penalties latae sententiae? Yes. Arguments: (1) The Code restates the old law ex integro and all authors regarded irregularities as penalties (cn 6, 2°). (2) The words *ex delicto* imply their penal nature (cn 2195 § 1). (3) Ignorance of irregularities does not excuse (cn 988), and this is in keeping with legislation on vindictive penalties (cn 2229 § 3, 1°).

985 7° AfER III/60, 184: E. de Bekker, W.F.: Non-tonsured religious acting as subdeacon. (Reply).

A non-tonsured religious acting as subdeacon during solemn Mass would act gravely illicitly, even if he observed the restrictions of S.R.C. 4181. He would incur an irregularity ex delicto only if he both wore the maniple and performed the reserved actions, unless he was in good faith.

**LIBER III, PARS I: DE SACRAMENTIS: TIT. VII:
DE MATRIMONIO**

- 1012 DC 1340, col. 1412: H. H. John XXIII: "Menace to Sanctity of Marriage."** (Allocution).
Cf. cn 1795, below.

- 1014 AfER IV/60, 271: E. de Bekker, W.F.: Ligamen.** (Reply).

Ruben, a doubtfully baptised Protestant, is married to Ann, a Catholic. It now appears that he was formerly married to Munde, who was unbaptised. If Ruben and Ann were married coram Ecclesia, the validity of their marriage must be upheld until it is proved otherwise in the proper court. Normally the court should pronounce in favour of the former marriage, but here it has to prefer a possibly ratum et consummatum to a doubtful non-christian union. The second marriage can only be convalidated if Ruben becomes a Catholic and then by a simple use of cn 1127 and marriage in forma. If Ruben and Ann went through a civil "marriage," various cases are envisaged in which Ruben can use cn 1120, cn 1127, or *Romani Pontificis* and marry Ann in forma.

- 1015 § 1 PM 9/60, 495-497: P. A. Boschi, S.J.: An consummetur matrimonium per copulam onanisticam.** (Reply).

Matrimony is consummated by an act "per se aptus ad prolis generationem." The Code does not further explain this. Two things are required for this copula perfecta—penetration of the vagina at least in an imperfect manner and also semination at least partial; both performed in the natural manner. Therefore sodomitic copula certainly does not consummate marriage and generally speaking onanistic union does not either. All depends on the two elements necessary.

- 1015 § 4 CpR V-VI/60, 425-454: X. Ochoa, C.M.F.: A catholici et Legitimitas Prolis ex Matrimonio Putativo Canonico.** (Article).

O. discusses the notion of legitimacy in canon law and the precise meaning and application of the term "putative marriage." He comes to the following conclusions: (1) An invalid marriage between non-Catholics, even though contracted in good faith, can never be canonically putative. (2) The child of such a marriage is illegitimate canonically even though civilly legitimate. (3) The illegitimate child of non-Catholic parents may be legitimated in the ways recognised in the Code

except through the subsequent putative marriage of his non-Catholic parents. (4) For the legitimate or legitimated child of non-Catholic parents to enjoy the rights of canonical legitimacy he must be baptized, cn 87.

1019 J IV/60, 441-459: V. Coburn: Homosexuality and the invalidation of marriage. (Article).

All priests are advised in cn 1019 to be certain that before a marriage takes place nothing stands in the way of its valid, licit celebration, and in the following canon the pastor is again told to be certain of the freedom from obstacles to the marriage in good time before the marriage. Lacking some definite signs, the priest would simply not inquire at all about homosexuality. Most probably, however, the obligation of the priest to inform all couples of the necessity of manifesting this condition before marriage is included in the demand of cn 1020 § 2. After an interesting discussion on this subject C. concludes that homosexuality is not impotence, though many homosexuals are probably impotent; that homosexuality can destroy consent; that error in reference to homosexuality would not form grounds for annulment; that conditions, present and future, concerning homosexuality, could form grounds for annulment; that the intention to practise homosexuality does not invalidate marriage; that from the medical viewpoint, a reliable survey suggests that half of the genuine homosexuals are canonically impotent, and one-third of this same group are incapable of giving free consent to marriage; and that marriage does not cure the invert.

1043 ST 8-9/60, 511-512: E. F. Regatillo: Dispensa de afinidad en primer grado de linea recta. (Reply).

It is wrong to say that the Holy See now always dispenses from the impediment of affinity in the first degree in the direct line *matrimonio consummato*. Formerly such an impediment was considered as of divine law. Now it is recognized as of ecclesiastical law. Still, the Holy See dispenses only in very rare cases and then without any publication of the dispensation.

1058 § 1 ST 7/60, 429-430: E. F. Regatillo: Impedimento de voto privado. (Reply).

Nicholas at 21 made a private vow of virginity. He wishes to marry while holding on to his vow. He may not licitly marry. Moreover, if both spouses made a pact about this,

they should not marry, because the validity of their marriage would be at least in doubt since they would seem to deny each other conjugal rights.

- 1060 J III/60, 295-326: A. Connick: Canonical doctrine concerning mixed marriages before Trent and during the seventeenth and early eighteenth centuries. (Article).**

In this first part of his article C. shows how medieval canonists and theologians, while upholding the illicity of mixed marriages, agreed unanimously upon the validity of such marriages. Many at the same time, however, taught that marriages with heretics were invalid unless the heretic would promise first to embrace the Catholic faith. C. then discusses the doctrinal disputes of the seventeenth and early eighteenth centuries when canonists and theologians undertook a more detailed study of the precise limits of this impediment, as well as the exempting and excusing causes which rendered it inapplicable.

- 1060 J IV/60, 398-418: A. Connick: Canonical doctrine concerning mixed marriages before Trent and during the seventeenth and early eighteenth centuries. (Continuation of previous article).**

In this second part of his article C. discusses the doctrine of canonists of this period on the causes required for ecclesiastical dispensations from mixed marriages and also the problem of pastoral assistance at such marriages. Many authors held that the ecclesiastical law ceased *ab intrinseco*, namely, by reason of the heretics' actual or promised conversion to the faith. And it was generally taught that the canonical impediment ceased *ab extrinseco* both by contrary custom and by papal dispensation. According to the jurisprudence of the Holy See, no dispensation would be granted from the impediment of mixed religion unless the heretic first abjured his heresy.

- 1061 § 1 CR 7/60, 420-2: L. L. McReavy: The Mixed-Marriage Promise of Catholic Education. (Reply).**

This promise normally implies undertaking an obligation to send the children of the marriage to a Catholic school. No such obligation is directly contained in the promise, or directly imposed by the positive law of the Church, but, unless it is undertaken, the natural moral duty imposed in *cn 1113* cannot normally be fulfilled. If therefore it is not undertaken by those who make the promise, the Ordinary should be informed.

- 1061 AER 10/60, 279: F. J. Connell, C.SS.R.: Certainty of the fulfilment of the premarital guarantees. (Reply).**

The obligation to have moral certainty rests with the Ordinary who grants the dispensation. In practice he must rely on the judgment of the priest doing the premarital investigation. Mere willingness of the non-Catholic to sign the promises does not give moral certainty. His sincerity can be gauged from the interest shewn in the talks on the Catholic Faith, general attitude to religion, spontaneous promise, etc.

- 1068 ST 7/60, 431-432: E. F. Regatillo: Epididymitis. (Reply).**

Martin, aged about 25, wishes to contract marriage after having had an operation for double vasectomy and the cutting away of both epididymi, the oblong body attached to the upper part of each testicle, consisting of a globus major and a globus minor—the former composed of the convoluted vasa deferentia, and the latter containing the efferent duct. The testicles are both preserved and are in healthy condition. Depressed because of severe temptations, capable of erection and penetration and the effusion of liquid consequent upon distillation, he wishes to know if he can validly and licitly marry.

Having had the extirpation of both epididymi, he suffers from an irremediable defect which makes him impotent, since because of the destruction of the vasa deferentia there can never be any ejaculation of true semen from the testicles. Such marriages have been declared null by the Rota (20/3/1939; 25/10/1945; A.A.S. 31-167). A difficulty might be suggested because of the reply of the Holy Office (28/9/1957) which declared that a doubly vasectomised man was not to be prevented from marrying; but the disparity in the cases is that in this case the testicles are whole and entire, with didymis and epididymis, whereas in Martin's case they are mutilated. He may be advised to consult skilled specialists to see if anything at all can be done to remedy his defect. In the meantime he must not marry.

- 1068 § 1 J III/60, 253-294: G. Sheehy: Male psychological impotence in judicial proceedings. (Article).**

An article on some of the more important problems which face a diocesan tribunal when it is called on to adjudge a case of psychological impotence in the male. S. examines the whole question of what our scientific and informed attitude to modern psychiatry ought to be and the problem of reducing this to practice. Some hold that the impediment of psychological

impotence is, for practical purposes, beyond the possibility of judicial proof; others maintain that the process *super rato* is necessarily a much less protracted one and, consequently, in the interests both of the parties and of the curial officials, to be adopted almost as a matter of course. S. believes that no such uncritical attitude will withstand scientific analysis; in fact, that any such may very well, in some instances, be the instrument of jeopardizing a claim in justice.

- 1069 HPR 12/60, 294-298: C. L. Parres, C.M.: Previous Bond and Renewal of Consent. (Reply).**

P. deals with the case of a non-Catholic who has "married" three times and now wishes to marry a Catholic. He discusses the case at length and shows that there are many possible solutions to a problem of this nature.

- 1077 § 1 ST 8-9/60, 511-512: E. F. Regatillo: Dispensa de afinidad en primer grado de linea recta. (Reply).**

Cf. cn 1043 above.

- 1078 HPR 7/60, 938-939: C. L. Parres, C.M.: The Impediment of Public Propriety. (Reply).**

An explanation of the diriment impediment of public propriety.

- 1078 ST 7/60, 430-431: E. F. Regatillo: Publica honestad nacida de concubinato. (Reply).**

Arthur, married and separated from his wife, lived with another woman, Bertha. Henry, Arthur's son, lived with them for some time and eventually married Bertha. Was the marriage null because of the impediment of public propriety? Yes, because the Code does not distinguish concubinage as between married or single people. The same outrage of public propriety is caused in either case, and the Roman Rota affirms that the concubinage which produces this particular diriment impediment can exist between married people (20/11/1930). So Henry and Bertha ought to convalidate the marriage or the *Promotor Justitiae* should impugn its validity if the scandal is public.

- 1081 § 1 J III/60, 343-353: J. Chatham: A Primer of Insanity Cases. (Article).**

C. gives a useful bibliography of the sources to be used in processing and adjudicating cases of insanity. He points out that the best source is, without doubt, the Decisions of the S.R.R. Cf. cn 1982.

**1081 IDE IV/60, part 2, 314-322: Rotal Sentence, 21/6/195
Coram Sabattani: Nymphomania and Consent.**

Nymphomania is the most extreme form of sexual hyperaesthesia. It subjects the woman to continual torment and renders her morally incapable of resisting. There is no doubt that it can invalidate a marriage in so far as the woman cannot assume the obligation of fidelity. It can also invalidate a marriage if such a woman cannot understand the substance of the contract. This sentence is commented on by S. Villeggiante.

**1082 § 1 ST 12/60, 700: E. F. Regatillo: Matrimonio entre bobos.
(Reply).**

Marriages between mental defectives should be discouraged. But for such marriages to be valid it is not necessary for the mental defective to have an appreciative knowledge of marriage (as some modern psychologists maintain). It is sufficient for them to know that marriage is the union of man and woman for the procreation of children.

**1083 § 2 OAK IV/60, 249-264: H. Flatten: Der error qualitatis
dolose causatus als Ergänzung zu c. 1083 § 2 CIC. (Article).**

A report of a meeting of "Officialates" at Bonn in 1960. This meeting recommended the insertion in cn 1083 § 2 of a third section in the following terms:

"Error circa qualitatem personae, etsi det causam contractui, matrimonium irritat tantum: . . . 3^o Si quis graviter ac dolose de alterius partis qualitate magni momenti deceptus matrimonium ineat, quod re vere cognita non contraheret."

It is pointed out how many unhappy marriages are due to dolus.

The question of what is grave deceit, and what qualities are of great importance, should be no more difficult to answer than the question of what degree of fear is grave.

**1083 EJC I-IV/59, 35-66: P. Fedele: "Error recidens in conditionem" nella dottrina degli atti giuridici in Diritto Canonico.
(Article).**

Cf. cn 104, above.

**1084 RDC III-IV/60 & I/61, 250-272: G. Oesterle, O.S.B.: Ehen
der Akatholiken in der kanonistischen Jurisprudenz. (Article).**

O. taking an article by H. Armbruster (Münchener Theologische Studien, 1959), on the attitude of Lutherans to the religious celebration of marriage and its indissolubility as his

point of departure, examines the jurisprudence of the Church to discover how she judges the consent of Lutherans. In the famous Eichstätt case, four times reviewed in 1731-2 (Fontes V, 3376ff), the S.C.C. decided that it could be presumed that Saxon Lutherans intended to contract a dissoluble marriage, and so married invalidly. From a survey of many other Rotal cases (notably the Boni-Gould case, S.R.R. 1911, 1913, 1915), and declarations of the S.C.S.O., O. concludes that the jurisprudence of the Holy See has not followed a consistent course and that diametrically opposed decisions have been given on one and the same case, one finding evidence merely of simple error and the other of a positive exclusion of *bonum prolis*.

1086 § 2 IDE III/60, part 2, 161-184: Two Rotal Sentences: (A) 19/12/1959, (B) 26/4/1958: Coram Lefebvre: Matrimonial Consent.

A. Nymphomania, proved by either pre-matrimonial or post-matrimonial conduct, constitutes a presumption in favour of the exclusion of the unity of the marriage. *Constat de nullitate*.

B. A positive act of the will to exclude one of the essential properties of matrimony is always necessary for simulation of consent. The personal conviction that one's hypersexual tendencies (nymphomania) makes it impossible for one to be faithful to one's spouse can be a *causa simulandi*. Sometimes a nymphomaniac is incapable of assuming the obligation of marital fidelity. *Constat de nullitate*.

S. Villeggiante adds a detailed commentary on the medical and juridical aspects of nymphomania.

1086 § 2 RDC III-IV/60 & I/61, 295-318: J. Bernhard: Quelques Aspects de l'Oeuvre Judiciaire de S. E. Le Cardinal Jullien. (Article).

A study, illustrated with copious quotations, of the decisions given by Cardinal Jullien during his half century as a judge of the Rota. B. rightly restricts his survey to three categories of nullity: (1) *fear*: particular attention is here paid (among many other aspects of the matter) to repugnance to the partner or the marriage, to the gravity of the fear and in a special way to reverential fear; (2) *simulated consent*: in particular, *exclusio boni prolis*, which is very fully documented and *exclusio boni sacramenti*; (3) *conditional consent*. This sort of survey, partial though it is, should prove very useful to those preparing judicial sentences of nullity.

1086 § 2 EJC I-IV/59, 35-66: P. Fedele: “Error recidens in conditionem” nella dottrina degli atti giuridici in Diritto Canonico. (Article).

Cf. cn 104, above.

1086 § 2 ST 12/60, 696-698: E. F. Regatillo: Matrimonio con pacto de no usar de el, según el método de Ogino. (Reply).

If one or both parties enter marriage with the express intention of not using marriage except during the infertile period and deny any right to their bodies outside those periods, the marriage is null.

It would be a valid marriage if they surrendered their mutual rights, but intended to use them only during the infertile periods. This would be licit only because of grave reasons, *e.g.*, if there were real danger to life for the mother in another pregnancy. But it is always better to advise the parties not to make any such pact. Such pacts always gave a basis for doubt about the validity of the marriage. If such a pact had been made, it would be better for the parties to renew their consent privately, excluding the pact.

1087 § 1 IDE IV/60, part 2, 305-309: Rotal Sentence, 7/4/1960: Coram Felici: Reverential Fear.

Fear which invalidates a marriage must be grave, extrinsic and unjust. In reverential fear the object feared is the displeasure or offence caused to anyone to whom reverence is due, including not only parents but also superiors and those united in bonds of love and gratitude. Its gravity is measured by the extent of the fear and the injustice which accompanies it. Pressure employed to hasten the celebration of the marriage need not necessarily be invalidating, though it could easily be, for example, if it were gravely unjust and were used to obtain consent to the marriage at this precise moment. All the circumstances ought to be considered.

1087 IDE IV/60, part 2, 329-341: Vicariatus Urbis Tribunal Appellationis, 17/3/1960: Coram Magliocchetti: Querela Nullitatis.

Cf. cn 1894, 2°, below.

1087 RDC III-IV/60 & I/61, 295-318: J. Bernhard: Quelques aspects de l'oeuvre judiciaire de S. E. le Cardinal Jullien. (Article).

Cf. cn 1086 § 2 above.

- 1092 IDE IV/60, part 2, 309-313: Rotal Sentence, 14/2/1959: Coram Ewers: Conditional Consent.**

Joseph S., a Catholic, married Joanna A., a Protestant, with the necessary dispensation. Three months after the marriage, when Joanna bore a daughter as a result of illicit cohabitation with another man, Joseph left her, claiming that the marriage was invalid because he always had the intention of marrying a virgin. First a civil divorce was obtained. Later the case came before the ecclesiastical tribunal.

Three points must be clearly proved: (1) that the condition was really made; (2) that it was not revoked; (3) that at the time it was made, it was not fulfilled. Once the condition is made, non-revocation is presumed; nor is it extinguished by the firm, though erroneous, conviction of the existence of the desired quality in the other party. *Constat de nullitate.*

- 1092 RDC III-IV/60 & I/61, 295-318: J. Bernhard: Quelques aspects de l'oeuvre judiciaire de S. E. le Cardinal Jullien. (Article).**

Cf. cn 1086 § 2 above.

- 1092 EJC I-IV/59, 35-66: P. Fedele: "Error recidens in conditionem" nella dottrina degli atti giuridici in Diritto Canonico. (Article).**

Cf. cn 104, above.

- 1094 RDC III-IV/60 & I/61, 273-294: A. Vetulani: La forme de la célébration du mariage en Pologne. (Article).**

This is an extremely detailed examination of a number of Polish marriage problems: (1) the confusion of civil laws in force between 1918 and 1946 in the territories formerly occupied by Prussia, Russia, Austria and Hungary, finally abolished on 26/9/1946 when the civil formalities were made obligatory and church weddings denied all juridical effect. The various denominations reacted differently to the freedom left the spouses to choose whether or not to have a church wedding, and if so, whether before or after the civil ceremony. (2) V. then summarizes in detail the local customs and synodal laws concerning the preliminaries for and celebration of Catholic marriages. (3) He concludes with an interesting excursus on the problem of the marriages of Polish workers in German territory during the 1939-1945 war, in the face of Nazi laws making assistance at them morally impossible and the possibility, discussed by the ecclesiastical authorities but never put to the test, of applying the provisions of cn 1098 to them.

- 1094 PdC 22/60, 1215-1217: L. Bender, O.P.: Mors repentina testis durante celebratione matrimonii. (Casus).**

An exposition of the requirements for validity in witnessing a marriage. The two *testes* need not be asked or designated beforehand, nor need they hear every word explicitly. It suffices that they be able to testify with moral certainty from what they have themselves perceived, if only implicitly (*e.g.*, from a distance), that the parties were asked for and manifested consent.

- 1095 PdC 15-16/60, 842-845: L. Bender, O.P.: Omissio interrogationis sponsae in celebratione. (Article).**

The law demands for validity not the mere presence of a qualified priest but a precisely determined mode of active assistance. B. insists (Cf. PdC 22/59 and 6/60) that the words of cn 1095 § 1, 3° “requirant excipiantque . . . consensum” must be understood according to their proper significance, which he expounds. Interpretation drawn from the *finis legis* cannot here be admitted. The fact that the priest is able to testify to the parties’ manifestation of consent is not enough.

- 1096 § 1 HPR 11/60, 192-194: C. L. Parres, C.M.: Written Delegation for Assistance at Marriage. (Reply).**

The law does not demand written delegation for validity or even for lawfulness. Still it is a wise procedure to give marriage delegation in writing. A bishop could make a particular law insisting on written delegation for lawfulness. He could not insist upon it under pain of invalidity, since this would be contrary to C.J.C.

- 1097 AdC 45/60, 670-2: A. Bride: Domicile pour un mariage. (Reply).**

In France a person’s canonical domicile may be different from his civil one. A case is discussed which touches on this point, and underlines the canonical rulings of cn 1097 on the lawful assistance at a marriage.

- 1097 § 1, 1° PM 11/60, 617-620: L. Bender, O.P.: Licentia celebrandi matrimonium extra paroeciam. (Article).**

To assist validly and licitly at a marriage a priest needs the delegation of the P.P. of the place (for validity) but also the necessary permission to perform a reserved parochial function (cn 462) and that of the proper pastor according to cn 1097 § 1, 3°. A pastor may reasonably give his vicars the power to assist validly and yet withhold the right to assist which is his

by means of cn 462, 4°. In practice, if delegation is given in a particular case, both are given. A pastor can also give the power to his curates (*delegatio generalis*) to permit assistance at the marriages of his parishioners.

- 1098 RDC III-IV/60 & I/61, 273-294: A. Vetulani: *La forme de la célébration du mariage en Pologne.* (Article).

Cf. cn 1094 above.

- 1113 CR 7/60, 420-2: L. L. McReavy: *The Mixed-Marriage Promise of Catholic Education.* (Reply).

Cf. cn 1061 § 1 above.

- 1113 L III/60, 273: Fr. Antoninus, O.F.M., Cap: *De patria potestate in jure naturali.* (Article).

A juridico-philosophical examination of the natural basis of parental authority, with the rights and duties of parents treated of under various headings. The relationship of Family, Church and State in the sphere of education is dealt with at length, but unfortunately the important principle of the *subsidiary* function of the civil power is given only passing mention.

- 1114 ACR IV/60, 309-316: G. C. Gallen: *Some aspects of Legitimacy.* (Article).

A comparative study of the Canon Law on this question and the Federal Marriage Bill which was introduced to the Federal Parliament of Australia in May 1960, but has not yet become law.

- 1114 CpR V-VI/60, 425-454: X. Ochoa, C.M.F.: *Acatholici et Legitimitas Proles ex Matrimonio Putativo Canonico.* (Article).

Cf. cn 1015 § 4 above.

- 1115 RDC III-IV/60 & I/61, 45-51: L. Bender, O.P.: *Pater est is quem iustae nuptiae demonstrant.* (Reply).

This is a presumption of law which yields to contrary proof. "Nuptiae" here means the state of marriage, not the act of getting married. "Iustae" means contracted according to law, even if some injustice was involved; it includes putative as well as valid marriages, even though this is the wide sense of "nuptiae," for cn 1114 with which it is closely linked expressly mentions putative marriages.

- 1118ff J IV/60, 428-436: St. C. Wellens: The dissolution of marriages. (Article).**

Regarding the dissolubility of marriage, W. firstly discusses an important distinction made by Pope Pius XII on 3/10/43 between "sacramental marriages which have been consummated and other marriages" and the theological basis of such a distinction. Secondly, he deals with indissoluble and dissoluble marriages. Thirdly, he examines the nature of the Pope's power to dissolve marriage and the motive for dissolution, and finally he treats of the petition and rescript relating to the dissolution of a marriage.

- 1119 EJC I-IV/59, 103-127: J. Casoria: De Natura Dispensationis et Potestatis Pontificiae dispensandi super ratum et non consummatum. (Article).**

C. examines the nature both of the dispensation itself and of the Papal power involved in a dispensation "super matrimonio rato et non consummato." It is a genuine dispensation, directly and immediately affecting the divine law, granted by the Pope in virtue of ordinary but vicarious jurisdiction, in regard to which therefore an adequate cause, necessary for validity, imposes a certain moral obligation "ob bonum animarum" on the Holy Father. He then discusses in what precise manner this vicarious papal power—which may not (*contra quosdam*) be delegated—affects the natural and divine positive law. A concluding section considers the ambit of this dispensation, namely the kinds of marriages to which it may be applied. A further article, concerning practical procedural aspects, is promised.

- 1120 AfER IV/60, 271: E. de Bekker, W.F.: Ligamen. (Reply). Cf. cn 1014 above.**

- 1120 J IV/60, 437-440: J. O'Rourke: Marginal notes concerning the Privilege of the Faith. (Article).**

A short treatment of those cases in which a dispensation from the bond of marriage is given in circumstances not covered directly by canons 1120 and 1125, the so-called Helena and Fresno cases. Those concerned with problems of administration do not look with favour upon the granting of such dispensation, and O'R. gives five reasons for such opposition. O'R. is not making a plea for greater lenience in granting the dispensation, but simply says that if Pope Pius XI, who was so concerned with the sacredness of marriage, could allow the application of the privilege, we should oppose its application with great hesitation.

- 1127 AfER IV/60, 271: E. de Bekker, W.F.: **Ligamen.** (Reply).
Cf. cn 1014 above.

- 1127 RDC III-IV/60 & I/61, 52-101: A. Bride: **Le Pouvoir du Souverain Pontife sur le mariage des infidèles.** (Article).

A thorough and well documented discussion of the theory underlying the Petrine Privilege, and the practice of the Holy See. B. examines the pre-Code canonists and theologians, and shows how some modern authors do not seem to be in touch with reality when they deny the Pope's power over the marriages of unbaptized persons, for he quotes cases to prove that the practice of the Holy Office is to dissolve all such marriages where it sees fit, the only exception being those which are both *ratum* and *consummatum*. In this respect B. singles out the view of de Léry, S.J. (CLA 4, 25), who wrote in Per III-IV/59, 333 (among other things) that the Church could not dissolve the marriage of two unbaptized persons.

- 1127 RDC III-IV/60 & I/61, 126-135: J. Denis: **La Portée du Canon 1127.** (Article).

From a consideration of pre-Code cases D. shows how cn 1127 is to be interpreted to cover any sort of doubt arising in *privilegium fidei* cases. The constant practice of the Holy See is to make marriage problems as easy as possible for converts from paganism: even "*contumelia Creatoris*" is not required — "*Cum militet ex parte coniugis conversi favor fidei, eo potest uti quacumque ex causa, dummodo iusta sit.*" . . .

- 1127 P 12/60, 1099-1102: P. R. Coyle: **Proving Non-Baptism.** (Reply).

Cf. cn 779, above.

- 1129 PdC 18/60, 989-1002: Bonaventura da Gangi, O.F.M.Cap.: **La fecondazione artificiale.** (Article).

In view of cn 19, "*adulterium*" in cn 1129 and in cn 2357 § 2, does not include cases of artificial insemination.

- 1138 RDC III-IV/60 & I/61, 102-116: P. Ciprotti: **De Matrimonii Sanatione in Radice Quaestiones Quaedam.** (Article).

Is a *sanatio* possible: (1) *after the death of one party?* Yes, for the canonical effects (e.g., legitimation), but not for the convalidation of the marriage; (2) *after a dispensatio super rato?* Possibly, but presumably one or both parties, in seeking the dispensation, have withdrawn consent, which would exclude a *sanatio*; (3) *after a dispensation ex privilegio fidei?*

presumably the matrimonial consent has been withdrawn since they cannot "cohabitare pacifice"; moreover the first marriage was dissolved by the second (cn 1126), so a sanatio would normally seem impossible; (4) *after a simplex convalidatio*? No, because it is already convalidated, but perhaps the canonical effects could be made retroactive; (5) *where invalidity is due to an impediment of divine law*? Cn 1139 § 2 says the Church *does not*, omitting a former statement that she *cannot*. A sanatio convalidates "a momento concessionis gratiae," making canonical effects retroactive to the time when the impediment ceased (Gasparri), or even to the time the marriage was attempted (Ciprotti). (6) an invalid but consummated marriage is sanated, but after sanation is not consummated: is a dispensatio super rato possible? Yes, because retroactivity does not make previous intercourse lawful; (7) which children are legitimated? Those born after the moment to which the canonical effects are made retroactive. Other children will follow the ordinary rule of cn 1116.

1147-8 CR 7/60, 428-30: J. B. O'Connell: Blessing Objects. (Reply).

A detailed answer to the question whether a mere sign of the cross suffices. The necessary distinctions are made according to whether or not the blessing is reserved, whether or not a special formula has been assigned, whether or not an indulgence is to be attached to the object blessed.

1148 § 2 CR 7/60, 426-7: J. B. O'Connell: Form of Blessing People. (Reply).

When a special form of blessing is rubrically prescribed, *e.g.*, the "Benedictio Dei . . ." after Communion outside Mass, its use is obligatory for validity. Otherwise, there seems to be no reason why the "Benedicat vos . . ." of Mass may not be used at other times in blessing people.

1148 § 2 AER 8/60, 135: J. P. McCormick, S.S.: Blessings in English. (Reply).

The words "formula ab Ecclesia praescripta" refers (among other things) to the language in which the blessing is given in the liturgical books (generally Latin), and its use is required for the validity of the blessing. Consequently a blessing given in an unauthorized translation would be invalid.

LIBER III, PARS II: DE LOCIS ET TEMPORIBUS SACRIS

- 1164 CR 9/60, 561-3: J. B. O'Connell: Position of a Baptistry. (Reply).**

The correct position is not rubrically determined, but by tradition it should be near the main door of the church, preferably in the north-west corner of an orientated church. The planning should ensure that the participants in a Baptism enter the church on their way from porch to baptistry.

- 1165 § 2 HPR 8/60, 1020-1021: C. L. Parres, C.M.: Consecration of Church before Debt is Paid. (Reply).**

There is no direct prohibition in the C.J.C. or in the universal pre-code law or in the decrees of the S.R.C. to the effect that a church must be free of debt before it can be consecrated. The most that the law demands is a prudent judgement on the part of the Ordinary that the church will not be turned over to secular uses.

A particular law could forbid the consecration of a church not free of debt.

- 1198 § 2 AfER III/60, 184: E. de Bekker, W.F.: Consecration of an Altar. (Reply).**

An altar consisting of three slabs joined together, resting on four columns, two of which are fixed to the middle slab, cannot be validly consecrated as an immovable altar. It would go against the obvious sense of cn 1198 § 2 and the replies of S.R.C. 3640 and 3797 to consecrate the middle slab together with its two supports as an immovable altar, though it would not be invalid. The middle slab can be consecrated alone as a portable altar.

- 1248 PM 7-8/60, 416-424: E. Trabucchi, S.J.: Verso un nuovo concetto di riposo festivo. (Article).**

T. thinks present-day explanations of the term "opus servile" to be unrealistic and would prefer to see the term changed in new legislation on the Sunday rest. The motive of gain should be the foundation of the new prohibition, not the servility which comes from the *finis operis*. The lack of uniformity in external observance and the fact that some work done for gain (transport service, etc.) would have to be excepted are the chief disadvantages of such a criterion. It should be remembered that abstention from work is only a means to the sanctification of the Sunday—works contrary to that end should be excluded.

- 1248 CR 10/60, 624-6: L. L. McReavy: Servile Work on Holy Days in Catholic Institutions. (Reply).**

A Catholic institution can allow Catholic domestic workers, engaged by the hour from outside, to work their usual hours on Holy Days, if they would otherwise tend to seek engagement elsewhere. Indeed, an excuse is not certainly needed, because it is arguable that a legitimate contrary custom has abrogated the prohibition of servile work on the workaday feasts which are anomalously of obligation in this country.

- 1249 PdC 20/60, 1136: D. Venditti: In oratorio semi-publico. (Reply).**

Save for some peculiar local reason, the P.P. cannot insist that religious exclude the public from their hospital chapel (a semi-public oratory) on Sundays and feastdays.

LIBER III PARS III: DE CULTU DIVINO

- 1257 EL IV-V/60, 217-257: C. Braga, C.M.: In novum Codicem Rubricarum. (Article).**

B. in a commentary on the new rubrics, deals briefly with the juridical effects of the new Code, n. 5, 222-223.

- 1258 § 2 HPR 12/60, 293-294: C. L. Parres, C.M.: Non-Catholic Pallbearers at Catholic Funerals; Catholic Pallbearers at non-Catholic Funerals. (Reply).**

Pallbearing at a funeral is not active participation in a religious rite, and therefore for such reasons as relationship, friendship or neighbourliness a Catholic may act as pallbearer at a normal non-Catholic funeral. A non-Catholic may be permitted to act as pallbearer at a Catholic funeral for similar reasons.

- 1274 CR 8/60, 491-2: J. B. O'Connell: Stations of the Cross during Exposition. (Reply).**

Forbidden by virtue of the S.R.C. instruction on Sacred Music and Liturgy of 1958, according to which Exposition of the Blessed Sacrament is a liturgical function (nn. 1, 47), and "it is unlawful to intermingle exercises of piety with liturgical functions" (n. 12).

- 1308 PdC 15-16/60, 839-841: A. Boni, O.F.M.: De discrimine inter professionem religiosam sollemnem et simplicem perpetuam. (Article).**

Since Trent, religious profession cannot be made without entering a particular institute, but *professio* and *adscriptio* remain juridically distinct. Solemn profession is perpetual of its very nature, independently of the perpetual *adscriptio* which nowadays de facto accompanies it. Simple profession, of its nature temporary, becomes perpetual, but only accidentally, when it is accompanied by perpetual *adscriptio*.

- 1313 HPR 12/60, 300: C. L. Parres, C.M.: Private Vows: Dispensation. (Reply).**

There are only two reserved private vows (cn 1309); all other private vows are non-reserved and may be dispensed by those having power of jurisdiction over persons bound by such vows. Local Ordinaries and Superiors in exempt clerical religious institutes may therefore dispense their subjects and certain others (Cf. cn 1313 and cn 514 § 1) from private non-reserved vows. This power is ordinary and may be delegated to others.

LIBER III, PARS IV: DE MAGISTERIO ECCLESIASTICO

- 1326 DC 1331 col. 834: Cardinal Montini: Episcopal Advice on Civic matters. (Ad Clerum).**

The Judgement of a Bishop touching materially the political domain is not formally political but pastoral. It concerns doctrinal and disciplinary principles with religious and moral issues which ecclesiastical authority has the duty and right to defend.

The "movement to the left" in its present form is a grave danger to faith and the spiritual life, and to the status of the Church.

- 1327 CR 9/60, 524-47: C. Davis: The Theology of Preaching. (Article).**

A discussion of the practical problem of preaching, its place in the life of the Church, its relation to the powers of order and jurisdiction, the distinction between the divine mission of bishops and the canonical mission of others, laymen included, the dynamic quality of God's word and its disputed sacramental efficacy. D. maintains that preaching is a direct cause of grace.

- 1332 CR 9/60, 556-9: L. L. McReavy: Catechetical Instruction of Adults. (Reply).**

The catechetical obligation imposed on P.P.s by cn 1332 is distinct from the homiletic obligation of cn 1344. Each serves a special and essential purpose, and each must be fulfilled. But a P.P. who includes a due measure of instruction in the homilies which he gives at the various Masses satisfies his grave obligation as far as the common law is concerned.

- 1344 CR 9/60, 556-9: L. L. McReavy: Catechetical Instruction of Adults. (Reply).**

Cf. cn 1332 above.

- 1363 § 3 J III/60, 327-342: N. Gill, C.P.: The transfer of Seminar-ians. (Article).**

On 25/7/41 the S.C. Relig. and the S.C. Sem. issued a Decree dealing with readmissions to the seminary and religious institute. The Decree demanded that in certain specific cases recourse be made to one of these Congregations. G. examines this document in the first part of his article and determines what specific cases require recourse. In the second part of

his article he considers the Decree of 12/7/57, issued by the S.C. Sem., which was concerned with the readmission of ex-seminarians rather than ex-religious, and which, like the Decree of 1941, required recourse to the S.C. The last part of the article deals with the present policy of the S.C. Relig. in admitting ex-seminarians to the religious institute.

- 1375 RDC III-IV/60 & I/61, 235-249: L. De Naurois: Les Rapports entre l'Etat et les Etablissements d'Enseignement Privé. (Article).**

The title is that of the French law of 31/12/1959, which is designed to give necessary help to private, and in particular to confessional schools. De N. examines the four alternatives offered by the law, two unacceptable, complete integration and the status quo, and two acceptable, simple contract and contract of association, in the light of two chief problems: (1) that of state control of education involved in state aid, and (2) the apparent conflict between state aid for denominational education and the traditional laicism of the French educational system.

- 1398 IDE III/60, part 1, 379-435: A. Rava: L'atteggiamento della Chiesa di fronte al comunismo dal 1846 al 1949. (Article).**
Cf. cn 2335 below.

LIBER III, PARS VI: DE BONIS ECCLESIAE TEMPORALIBUS

1509, 5° ST 7/60, 413-425: E. F. Regatillo: Prescripción de estipendios y cargas de misas. (Article).

R's. conclusions are:

1. Mass stipends are not subject to prescription.

2. The application of a Mass for a certain intention is not subject to prescription, but the mere celebration of a Mass, say, a very early Mass for workers, could be.

3. Accidental circumstances, time, place, altar, type of Mass, sung or otherwise, can be subject to prescription.

4. By prescription the obligation of saying Mass for a specific intention can pass from one person to another.

5. By prescription a real obligation to say a certain Mass can pass into a personal obligation.

1513 § 2 ST 8-9/60, 489-504: Legados Pios Informes. (Article).

If money is left for pious causes in a will declared void in civil law, the heir in civil law is bound in conscience to fulfil the will of the testator.

If a legal heir is told in a will that on his death the property must be left to a pious cause or institution, this must be done even though the will has been declared void because of a lack of legal formalities.

If in a will, civilly void, mention is made of a legacy for a cause other than pious, the doctors disagree whether or no it binds in conscience. Some say it is valid because of R.J. 24: *Accessorium naturam sequi congruit principalis*. Others hold it is null and void because this solution is more conformable to civil law and to the juridical basis on which it is formed, because it is unthinkable that the ecclesiastical legislator should bother with a profane cause which is not necessary to bolster the validity of the pious one.

1517 § 2 VR V/60, 415-7: G. Escudero, C.M.F.: Sobre Misas Gregorianas. (Reply).

When money is left to a community for Gregorian Masses to be said—the balance to be for the community—and the total amount is insufficient even for the Masses, the community is not obliged to make up the deficit. But if no one can be found who will celebrate Gregorian Masses for the amount available or even less, the only solution is recourse to the Holy See, which alone is competent to reduce Mass obligations. The matter should be put to the local Ordinary.

1529 IDE IV/60, part 2, 322-328: Rotal Sentence, 3/2/1960: Coram Sabattani: Pious Foundations.

Cf: cn 1544, below.

1544 IDE IV/60, part 2, 322-328: Rotal Sentence, 3/2/1960: Coram Sabattani: Pious Foundations.

Cn 1529, which refers to the local civil law in contracts, does not apply to the constitution of juridical persons. Rather all the discipline concerning juridical persons is regulated by canon law and, in the absence of specific norms, by the general principles of law cum aequitate canonica servatis. The will of the donor of a pious cause must be absolutely respected within the limits of the law. Hence it is never lawful to change the destination of the donation. As regards pious foundations (to be distinguished from pious causes in so far as they presuppose the existence of a juridical person) it must be remembered that the constitution of a juridical person has various stages and it is only with the formal approbation that it receives juridical personality and that the goods destined for it become its property, thus changing their nature from lay goods to ecclesiastical goods. If, before the decree of formal erection, one of the trustees of the property is at fault, the others may take action against him.

LIBER IV: DE PROCESSIBUS

- 1552ff** EJC I-IV/59, 137-139: T. Tobin: *De Aliquibus Processibus Administrativis in Iure Canonico promovendis.* (Article).

The briefest outline of the steps to be taken by a diocesan Curia in conducting an administrative process, in any matter apart from the very few—as e.g. the removal of a parish priest, the Petrine Privilege—for which norms are given in the general law.

- 1553** PdC 15-16/60, 846-854: Bonaventura da Gangi, O.F.M.Cap.: *Potestà della Chiesa di giudicare “ratione peccati.”* (Article).

A defence of the Church's power to punish baptised persons for violations of the civil law and for misuse of the vote in civil elections.

- 1572** RDC III-IV/60 & I/61, 24-44: O. Bejan: *Una singolare prerogativa dei Protopopi nell'antico diritto particolare della Chiesa Romana: la facoltà di giudicare tutte le cause in prima istanza.* (Article).

History of the power of the protopopes in Roumania: now abolished by the Oriental Code.

- 1598** RDC III-IV/60 & I/61, 174-191: C. Lefebvre: *Un Texte Inédit sur la Procédure Rotale.* (Article).

L. is both a historian and an auditor of the Rota. He here edits a Ms in the Vatican Library (Pal. lat. 685) on Rotal procedure, probably dating from before the middle of the fourteenth century and written in Rome. It begins: “Qualiter procedatur in causis in pallacio apostolico.”

- 1757 § 2** ME IV/60, 649-684: Aemilius Colagiovanni: *De Collusionis Crimine secundum S. R. Rotae Jurisprudentiam.* (Article).

Owing to the fact that the faithful know more about the nullity of marriage and how to apply for a declaration thereof than ever before, it sometimes happens that either in good or bad faith they are guilty of collusion and falsehood in giving their depositions in the matrimonial courts. C. defines collusion as understood by the Rota and goes on to consider the internal and external criteria which could lead to a presumption of collusion and falsehood in the parties themselves and in the witnesses, and concludes that collusion must not be merely presumed but should be proven. If collusion is proven then

there is a presumption of falsehood. If some witnesses have been primed by the parties or by others, a presumption would arise that all the witnesses had been similarly primed.

1795 DC 1340, col. 1412: H. H. John XXIII: "Menace to Sanctity of Marriage."

Allocution to S.R.R. Sound doctrine is demanded of those who concern themselves with the problems of marriage.

Jurists particularly must find sound doctrine from the sources of the natural and positive law; not conceding any falsity or weakness; keeping a balanced judgement which is also cognizant of the circumstances of the times in which we live.

1869 § 2 IDE IV/60, part 2, 329-341: Vicariatus Urbis Tribunal Appellationis, 17/3/1960: Coram Magliocchetti: Querela Nullitatis.

Cf. cn 1894, 2°, below.

1894, 2° IDE IV/60, part 2, 329-341: Vicariatus Urbis Tribunal Appellationis, 17/3/1960: Coram Magliocchetti, Bidagor, Canzoneri: Querela Nullitatis.

X petitioned that her marriage with Y be declared null ex capite vis et metus sibi a parentibus incussi. The Court of First Instance responded Non Constat. Later she appealed, asking that the previous sentence be declared null on account of defective motivation concerning the fear inflicted by the girl's mother and on account of a violation of cn 1869 § 2. Insufficient motivation may be defective motivation, but the norms governing the validity of a sentence should be strictly interpreted, so that if there is doubt the sentence is considered valid. When a marriage is impugned on account of reverential fear inflicted by the parents, it is possible that it be proved invalid on account of fear inflicted by the father and not on account of fear inflicted by the mother and vice versa. But this obtains only when it is proved that the father and mother act as two distinct causes, not together—one being the primary cause and the other secondary, receiving efficacy from the primary cause. And it must be clear that the accusing party wishes to distinguish between the fear inflicted by the father and the fear inflicted by the mother. Non constat de nullitate sententiae primi gradus.

- 1960 RDC III-IV/60 & I/61, 9-23: V. Bartocetti: Codicis J. C. Emendatio a Pio XI circa leges et causas matrimoniales disposita Anno 1938. (Article).**

B. lists the conclusions of the 1938 Commission: (1) eliminate all cases of simulated and conditional consent, unless forced; (2) allow convalidation of marriage by tacit consent, even in cases of vis et metus; (3) advocates to be assigned ex officio by the Tribunal; (4) these laws to be retroactive. These rules were formulated to stop the flood of nullity cases cooked up by lay advocates on defective consent: B. suggests they should be considered in the proposed revision of the Code.

- 1964 IDE III/60, part 1, 436-439: E. Graziani: A proposito di matrimoni celebrati nella Basilica di S. Pietro. (Article).**

In virtue of the Motu Proprio "*Qua cura*," which has not been explicitly derogated, it is quite clear that the only tribunal competent to judge marriages celebrated in St. Peter's Basilica is *il Tribunale del Vicariato dell'Urbe*.

- 1990 CR 7/60, 422-6: L. L. McReavy: Certain Disparity of Cult Represented as Doubtful. (Reply).**

Cf. cn 42, § 1 above.

- 2186ff OAK III/60, 189-221: F. W. Kremzow: Die Suspension ex informata conscientia. (Article).**

A history of suspension ex informata conscientia, followed by a commentary on each cn. On disputed points K. generally lists the arguments on either side with full references to authors; he does not decide these questions.

LIBER V: DE DELICTIS ET POENIS

2230 AdC 48/60, 719-20: J. C. Didier: L'absolution des enfants. (Reply).

What formula of absolution is to be used when hearing the confessions of "impuberes"? (According to cn 88 § 2 puberty starts for boys on the completion of their fourteenth year, for girls of their twelfth year). Cn 2230 excuses them from penalties latae sententiae. The formula "Dominus noster Jesus Christus . . ." would therefore seem unnecessary. D. notes that this question is rarely treated by the authors, but Cappello deals with it in his *De Pœnitentia*. According to him, there would be no fault in omitting the formula if one had a *positiva ac probabilis suspicio* that the penitent (adult) had not incurred a censure; a fortiori, if one had certainty that no censure had been incurred (*e.g.*, when a confessor hears the Pope's confession). Such certainty exists as regards "impuberes" (cn 2230).

The authors are silent on this point, because our Code only dates from 1917, and before that time it was by no means useless to absolve impuberes from censures (" . . . in quantum possum et tu indiges"), as it was not certain when "infantia" ended and puberty began, and also because even infantes were considered as under censure if they struck a cleric or violated the enclosure of a monastery. Impuberes were moreover only exempt from censures "donec dolus probetur."

2247 § 2 HPR 7/60, 933-934: C. L. Parres, C.M.: Pastor and Confessions outside his Diocese. (Reply).

A pastor can absolve one of his parishioners from a latae sententiae censure reserved by diocesan law to the Ordinary when he is outside the boundary of his diocese. This is the case even if he and the parishioner went outside the diocese solely for this purpose. There is no fraud involved since this procedure is in accordance with the law. Ab homine censures are reserved everywhere, therefore this subterfuge would be of no avail against them.

2256 CR 8/60, 486-8: L. L. McReavy: Civil Marriage Solely for Civil Benefits. (Reply).

A civil marriage between a divorced man, whose wife is still alive, and his widowed housekeeper, merely in order that she may benefit from the civil effects in regard to income tax, and

with no intention of cohabitation, is not only gravely forbidden, but automatically entails *infamia iuris* for both parties. The Church tolerates civil marriage of the baptized for the sake of the civil effects, but only as a complement of a religiously valid marriage.

2335 IDE III/60, part 1, 397-435: A. Rava: L'atteggiamento della Chiesa di fronte al comunismo dal 1846 al 1949. (Article).

In the first two sections of this article the importance of the subject and the attitude of the Church to Communism in evangelical, patristic and scholastic times are discussed in broad outline. Then the modern condemnations of Communism—those of Pius IX, Leo XIII, Pius X, Benedict XV, Pius XI, Pius XII and John XXIII—are dealt with in detail with particular emphasis on the present juridical position of Communists, the penalties they incur and the validity of their marriages. Although it is never lawful to join a Communist party—and those who do are public sinners and incur *infamia facti*—only those who outwardly profess, defend or propagate materialistic and anti-Christian Communism incur, as apostates, the *ipso facto* excommunication specially reserved to the Holy See. Hence the marriages of members of Communist parties are governed by cn 1065 and cn 1066, while in the marriages of Communist leaders the provisions of cns 1061, 1102, 1109 § 3 are to be observed. Communist literature falls under the prohibition of cn 1398 § 1.

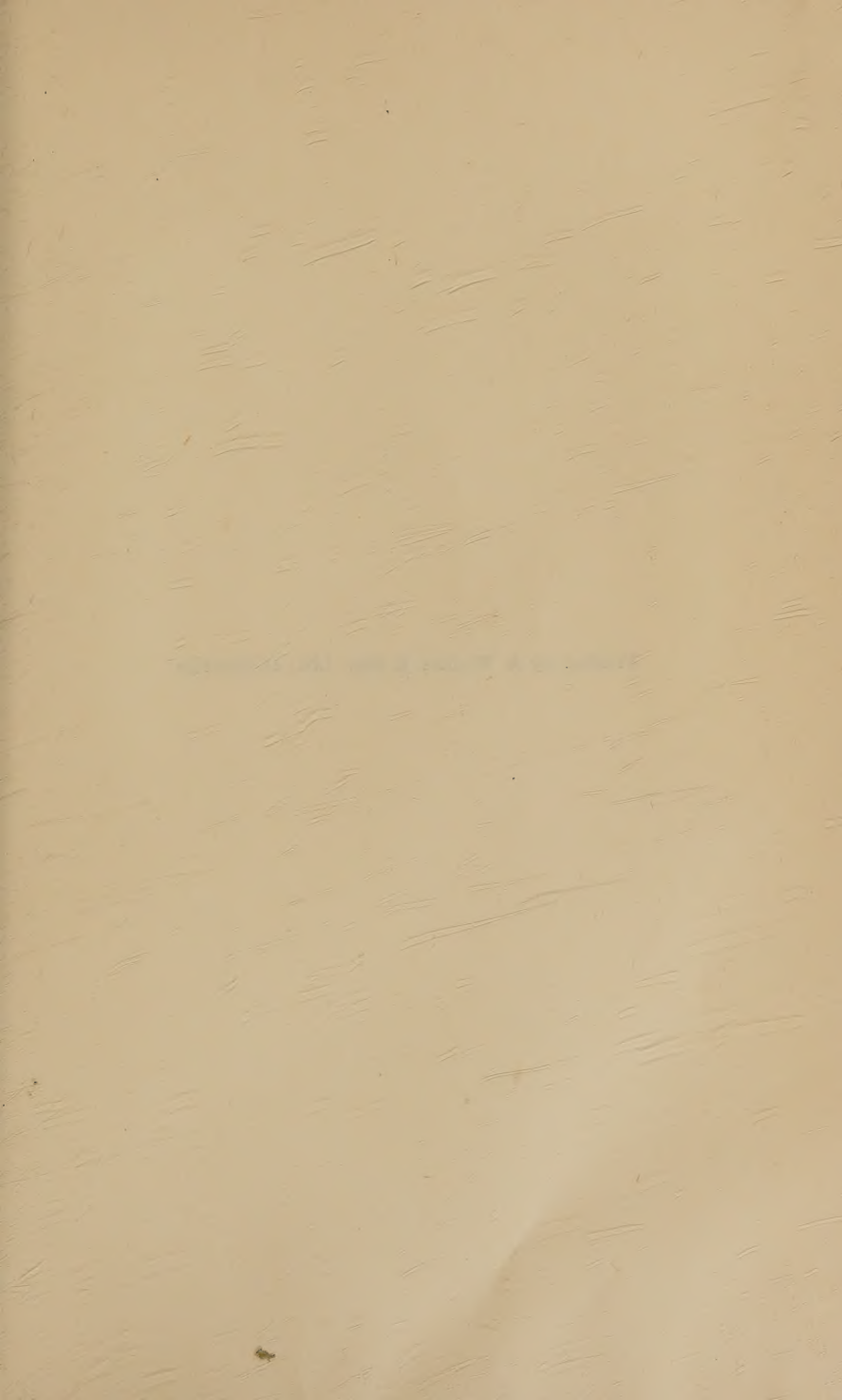
2341 IER 10/60, 237: T. Cunningham: The Privilege of the Forum. (Reply).

Cf. cn 120 above.

2350 § 1 EJC I-IV/59, 128-136: A. Gregnanin: L'Aborto nel Diritto Sovietico, Italiano e Canonico. (Article).

A study in comparison, of the Soviet (since the 1917-18 revolution), Italian and Canonical legislation concerning abortion. G. gives a detailed account of the Soviet law, both in its development and in its current (i.e. up to the era of Stalin) form. He points out that, though it permits abortion only in exceptional circumstances, its opposition to the practice is based on purely materialistic and State-centred grounds. In this the Soviet legislation, while on paper not extravagantly different from the other two, is poles apart from both the Italian and the Canonical.

- 2357 PdC 18/60, 989-1002: Bonaventura da Gangi, O.F.M.Cap.: *La fecondazione artificiale*. (Article).
Cf. cn 1129 above.
- 2380 CBG III/60, 405-419: W. Dumon: *Het Verbod aan Geestelijken en Gelijkgestelden tot Handeldrijven en Zaken Doen*. (Article).
Cf. cn 142 above.
- 2413 VR IV/60, 342-3: A. Peinador, C.M.F.: *Secreto Profesional*. (Reply).
Cf. cn 513 § 1 above.



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